



C.M.A.(MD).No.1871 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD).No.1871 of 2013

The Divisional Manager,
New India Assurance Company Ltd.,
3, Main Road,
Dindigul.

.. Appellant/2nd Respondent

Vs.

1.G.Seenivasan

.. 1st Respondent/Petitioner

2.V.Madasamy

.. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order Section 173 of Motor Vehicles Act, to set aside the award and decree dated 20.06.2013 made in M.C.O.P.No.388 of 2012 on the file of Motor Accident Claims Tribunal (Special Sub-Court), Dindigul.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.A.Saravanan for R-1

No appearance for R-2



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.388 of 2012 dated 20.06.2013 on the file of Motor Accident Claims Tribunal (Special Sub-Court), Dindigul, wherein, the first respondent herein has filed a petition before the Tribunal claiming compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident.

2. The Tribunal has awarded a sum of Rs.54,300/- as compensation with 7.5% interest. As against the award passed by the Tribunal, the appellant/Insurance Company has filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

4. The brief contents of the averments made in the petition are as follows:

On 18.12.2005 at about 5.00 PM, when the petitioner was proceeding near Sholavandan – Kallupatti Cross Road, a TVS XL vehicle bearing



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Registration No.TN 59 R 7831 came in a rash and negligent manner and dashed against the petitioner, due to which, he sustained fracture and injuries and therefore, he claimed a sum of Rs.1,00,000/- towards compensation.

5. The averments made in the counter filed by the second respondent are as follows:

The claim petition is false and not maintainable either on law or on facts. The accident took place only due to the negligence on the part of the petitioner, who crossed the road without noticing the vehicles passing the road. Since the accident occurred due to the negligence on the part of the petitioner, the second respondent is no way liable to pay compensation to the petitioner. Hence, the claim petition is liable to be dismissed.

6. Thereafter, the second respondent has filed additional counter stating that the accident did not occur as alleged in the petition. The first respondent vehicle did not involve in the accident. In fact, the accident occurred on 16.12.2005 and the petitioner had also taken treatment in Vadipatti Government Hospital and thereafter, the present complaint was



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given as an after thought and the claim petition was filed. Hence, the claim petition is liable to be dismissed.

7. Before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 was marked.

8. After hearing both sides and perusing the records, the Tribunal has awarded a sum of Rs.54,300/- towards compensation with 7.5% interest per annum.

9. As against the award passed by the Tribunal, the present Civil Miscellaneous Appeal is filed by the second respondent/Insurance Company on various grounds including the liability, since the first respondent vehicle was not involved in the accident.

10. The learned counsel for the appellant/second respondent would contend that the first respondent vehicle was not involved in the accident. In fact, the accident occurred on 16.12.2005 and the petitioner was admitted



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in Vadipatti Government Hospital. Ex.R1, Accident Register, was marked through the Doctor, who admitted the petitioner in the hospital and the Doctor was also examined as R.W.1. By examining the witnesses and marking the documents, the appellant/second respondent proved that the accident did not occur on 18.12.2005 and the first respondent vehicle was included after thought. But the above said aspects have not been considered by the Tribunal. Hence, the order passed by the Tribunal is liable to be set aside.

11. The learned counsel appearing for the first respondent/petitioner would contend that the accident took place on 18.12.2005 and not on 16.12.2005. The petitioner categorically deposed about the manner in which the accident took place and the date of the accident. The respondents have examined R.W.1 and marked Ex.R1 stating that the same petitioner was admitted in the hospital on 16.12.2005, alleging that he sustained injury on the road accident near Sholavandan. However, the same R.W.1 in her cross-examination stated that she has not given any treatment to the petitioner and she did not know, who appeared on the date of admission, i.e., on 16.12.2005. Moreover, the first respondent/driver of the vehicle also



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admitted the accident and final report was filed before the Judicial Magistrate Court. The appellant/second respondent failed to examine any witness from the Police Department, who investigated the case and thereby, the Tribunal after considering all these issues ordered compensation of Rs.54,300/- and therefore, the appeal is liable to be dismissed.

12. This Court heard both sides and perused the records. After hearing both sides and upon perusing the documents including the order of the Tribunal, the points for determination in this appeal are:

- (i) Whether the accident was happened on 18.12.2005 and the second respondent/first respondent vehicle was involved in the accident?
- (ii) Whether this appeal is liable to be allowed or not?

Points:

13. In this case, the appellant/second respondent denied the involvement of the vehicle in the accident and to prove the same, they examined R.W.1 and marked Ex.R1. The evidence of R.W.1 shows that on 16.12.2005, one Seenivasan along with his father Gopal was admitted in the hospital for the injuries sustained by Seenivasan as stated in Ex.R1,



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Accident Register. However, the same R.W.1 during cross-examination stated that she did not give treatment to the petitioner and no intimation was given to the jurisdictional Police in respect of the accident. She also admitted that she did not know whether the present petitioner and the name mentioned in Ex.R1 were one and the same.

14. Further, on the side of the appellant/second respondent, no complaint was given as against the petitioner for the false claim as well as false complaint. FIR was registered against the first respondent/driver of the vehicle and final report was filed. The driver of the first respondent vehicle also admitted the offence before the Judicial Magistrate Court. The appellant/second respondent failed to examine the police officials, who investigated the case and therefore, without examining the main witnesses, the mere marking of document, Ex.R1 through R.W.1 alone is not sufficient to prove the contention of the appellant/second respondent. Therefore, the appellant/second respondent failed to prove that the accident was happened on 16.12.2005 and the vehicle did not involve in the accident. Per contra, the petitioner side evidence shows the involvement of the vehicle in the accident and the accident occurred on 18.12.2005.



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15. The Tribunal also after elaborate discussion held that the appellant/second respondent failed to prove his contention that the first respondent vehicle was not involved in the accident and awarded a sum of Rs.54,300/- as compensation to the petitioner.

16. As far as the quantum of compensation is concerned, there is no dispute. The appellant/Insurance Company has only disputed the liability on the ground that the first respondent vehicle was not involved in the accident. This Court already came to the conclusion in the previous paragraphs that the accident occurred due to the negligence on the part of the first respondent/driver of the vehicle and this vehicle is involved in the accident. Though the doctor has given disability certificate for the petitioner for 39% of disability, the Tribunal has without reasons reduced the disability as 20%. However, the claimant has not filed an appeal as against the quantum of compensation. Therefore, this Court need not go into that aspect.

17. In view of the above discussion, this Court finds no merits in the appeal and the same is liable to be dismissed. Accordingly, the Civil



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Miscellaneous Appeal is dismissed and the impugned award passed in M.C.O.P.No.388 of 2012 dated 20.06.2013 on the file of Motor Accident Claims Tribunal (Special Sub-Court), Dindigul is confirmed. The appellant/second respondent is directed to deposit the entire award amount within a period of two (2) months from the date of receipt of a copy of this order, if not already deposited. There shall be no order as to costs.

15.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Motor Accident Claims Tribunal (Special Sub-Court),
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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