



C.M.A.(MD).No.1014 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1014 of 2014

United India Insurance Company Limited,
Divisional Office – 1,
Contonment,
Trichy – 1.

... Appellant/2nd Respondent

-VS-

1. P.Manimaran

... 1st Respondent/Petitioner

2. D.Veerasekaran

... 2nd Respondent/ 1st Respondent

(2nd respondent *ex parte* before the
Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.01.2014 in M.C.O.P.No.1215 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge) Tiruchirappalli.

For Appellant : Mr.V.J.Kumaravel

For Respondent : Mr.Prabhakaran
for Mr.N.Sudhagar Nagaraj – for R1
: No appearance - for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge) Tiruchirappalli in M.C.O.P.No.1215 of 2013 dated 08.01.2014, wherein, the first respondent herein filed a petition for granting compensation as against the second respondent and the petitioner herein.

2. The Tribunal has awarded a sum of Rs.96,000/- (Rupees Ninety Six Thousand only) towards compensation with interest at the rate of 7.5% per annum. As against the award passed by the Tribunal, the present appeal has been preferred by the second respondent/Insurance Company.

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



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4. The brief facts of the petition averments are:

The petitioner was aged about 11 years at the time of accident. On 27.11.2004 at about 08.00 hours, when the petitioner was walking from South to North near at River Bridge, Kulakudi Village, TVS 50 Vehicle bearing Registration No.28-H-5099 belonging to the first respondent driven by its rider in a rash and negligent manner, dashed against him on his behind. Due to its impact, he was thrown off on the road and sustained injuries. The petitioner was taken to the nearby private clinic and given first aid and treatment. Due to non-restoration of injuries, he was taken to AGM Government Hospital, Trichy, and admitted as inpatient and taken treatment as inpatient for a period of 10 days and as outpatient for more than a year. Hence, the petitioner has filed MCOP seeking compensation of Rs.2,00,000/- (Rupees Two Lakhs only)

5. The brief facts and counter filed by the second respondent are as follows:

The respondents denied the averments made in the petition. The parents of the minor petitioner, the first respondent and the alleged rider of the bike



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have colluded and fabricated a false case as if the first respondent vehicle was involved in that alleged accident. The second respondent is no way connected with the claimant. The accident is said to have happened on 27.11.2004, but the injured petitioner was not admitted in the Government Hospital immediately after the occurrence. He was admitted in the Trichy Government Head Quarters Hospital. The first respondent was residing at Namakkal, but the alleged accident had happened in a remote village of Trichy District. The petitioner did not lodge a complaint before the police immediately after the occurrence. They lodged a complaint before the police. They did not give any proper explanation for the inordinate delay in lodging the FIR. The case is not a genuine and it is a fraudulent claim. Hence, the petition is liable to be dismissed.

6. In order to prove the case of the petitioner, the petitioner has examined P.W.1 and P.W.2 and marked exhibits Exs.P.1 to P.6 and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R.1 to R.9 were marked.



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7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.96,000/- (Rupees Ninety Six Thousand only) towards compensation with interest at 7.5% p.a.

8. As against the award passed by the Tribunal, the second respondent/Insurance Company has preferred the present appeal on various grounds.

9. The learned counsel appearing for the appellant/second respondent contended that the 2nd respondent/first respondent vehicle did not involve in the said accident. The appellant/ second respondent is not responsible for any claim. The owner of the vehicle and the parents of the claimant have collusively created documents as if the accident was occurred due to the negligent driving of the 2nd respondent/1st respondent vehicle. Already the appellant/2nd respondent had lodged a complaint before the the concerned police and they have not taken any action. Therefore, the award passed by the Tribunal is liable to be set aside by allowing this appeal.



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10. The learned counsel appearing for the first respondent/claimant would contend that on 27.11.2004, at about 08.00 hours, the claimant was walking from South to North near at River Bridge, Kulakudi Village, the second respondent vehicle came in a rash and negligent manner dashed Minor Manimaran on his behind and thereby, he sustained injuries and was taken to the nearby private hospital and given treatment. Thereafter, the first respondent was taken to AGM Government Hospital, Trichy for further treatment. The accident had occurred only due to the rash and negligent driving of the second respondent's vehicle driver. An FIR has been registered as against the rider of the second respondent vehicle. Thereby, the Tribunal after taking into consideration of all these aspects, awarded the compensation. Hence, the petition is liable to be dismissed.

11. After hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

(i) Whether the appeal is liable to be allowed or not?



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12. In this case, the appellant denied the involvement of vehicle of the second respondent in the accident. In order to prove the case of the first respondent/ petitioner, the first respondent has examined P.W.1 and P.W.2 and marked Exs.P.1 to P.6. On the side of respondents they examined R.W.1 and R.W.2 and marked Exs. R1 to R9.

13. It is admitted by both parties that the driver of the vehicle admitted the offence before the criminal Court and paid fine amount. Therefore, the first respondent/petitioner proved the negligence and involvement of the vehicle bearing registration No.TN-28-H-5099 in the accident.

14. Per contra on the side of respondents they examined R.W.1 and R.W.2. R.W.1 is a Private Investigation Officer appointed by the Insurance Company and he produced Exs.R3 to R5. Already the proper Investigation Agency investigated the case and filed final report and the competent Court also found guilty based on the admission made by the accused and also convicted. While so, the evidence of R.W.1 who is not a competent persons to investigate the case is not acceptable one. The Tribunal also after elaborate discussion correctly came to a fair conclusion.



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15. The learned counsel for the appellant has relied upon the document Ex.R5 – Confession Statement given by Veerasekaran/second respondent. The said document Ex.R5 is in admissible on evidence and the same is not in accordance with law. The first respondent/petitioner has not taken steps to examine the owner of the vehicle and the Tribunal also discussed about the admissibility of the documents and evidence.

16. The first respondent/petitioner proved that the vehicle of the second respondent/first respondent had involved in the accident. The documents would show only the involvement of the vehicle and the appellant failed to adduce sufficient evidence to rebut the evidence of the claimant's side. Therefore, the contention of the appellant to that regard is not acceptable.

17. In view of the above discussions, this Court finds no merits in the appeal and it deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed, by confirming the order passed by the Tribunal in M.C.O.P.No.1215 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge) Tiruchirappalli. The appellant is directed to



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deposits the entire amount within a period of two months from the date of this order. It is stated that already 50% of the claim amount has been deposited and the same was also withdrawn by the claimant. The remaining amount shall be deposited by the appellant within a period of two months from the date of copy of this order. There shall be no order as to costs.

05.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal
(Special Subordinate Judge)
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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