



C.M.A.(MD)No.482 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.482 of 2014

and

M.P(MD) No.3 of 2014

and C.M.P(MD) No.457 of 2018

The Branch Manager,
National Insurance Company,
4132, Keela Raja Veethi,
Pudukkottai.

... Appellant/2nd Respondent

-VS-

1. M.Sarfudeen

... 1st Respondent/Petitioner

2. Barook Ali

... 2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.935 of 2001, dated 24.11.2010 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court and Special Court, Pudukkottai.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.G.Thandayuthapani – for – R1

: No appearance – for R2



C.M.A.(MD).No.482 of 2014

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.935 of 2001, dated 24.11.2010 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court and Special Court, Pudukkottai, wherein, the first respondent herein has filed the petition claiming compensation for the injury caused in the road accident. The Tribunal has awarded a sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only) towards compensation with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the second respondent has preferred the appeal.

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

3. According to the first respondent/petitioner herein, he has filed the petition, before the Tribunal stating that the petitioner on 22.12.2000, at about 06.30 p.m, was proceeding in a two wheeler bearing Registration No.TN-55-E-3974, at that time near Pudukkottai to Thanjavur main road, Government



C.M.A.(MD).No.482 of 2014

Godown, a Car bearing Registration No.TNS-5595 came in a rash and negligent manner and dashed against the petitioner's vehicle. The accident occurred due to the negligence on the part of the driver of the Car. Thereby, the petitioner sustained grievous injuries and permanent disability. The petitioner was aged about 24 years, he was earning a sum of Rs.5,000/- per month and thereby he claimed a sum of Rs.10,00,000/- towards compensation.

4. The appellant/second respondent filed counter disputing the accident stating that the petition is not maintainable and the same is liable to be dismissed. The first respondent has not informed about the accident and no claim Form was submitted. The petitioner is put to strict proof of the manner of accident, injuries sustained by the petitioner and the second respondent denied the age, income and occupation of the petitioner.

5. In the additional counter filed by the appellant/second respondent it is stated that, in fact, the accident took place due to the police vehicle and thereafter, the 1st respondent's vehicle was included in this case. There was so many difference between the records and the petition filed by the petitioner.



C.M.A.(MD).No.482 of 2014

WEB COPY

In the First Information Report, it was stated that the petitioner was proceeding in a two wheeler but the document shows that he travelled in the Auto Rickshaw. In the First Information Report, it was mentioned as Van and the number of Van not known. The accident took place due to the negligence on the part of the petitioner and not on the part of the first respondent. Therefore, the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and documents Exs.P.1 to P.7 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and Ex.R.1 to Ex.R.3 were marked and also Ex.X.1 was marked. After elaborate discussions, the Tribunal has awarded a sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only) towards compensation with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the second respondent has preferred the appeal by disputing the liability.

7. The learned counsel appearing for the appellant would contend that the first respondent vehicle was not at all involved in the accident and in the F.I.R was registered as against an unidentified vehicle and thereafter, the



C.M.A.(MD).No.482 of 2014

records were manipulated as the first respondent vehicle is involved in the accident. In the F.I.R, previously it was mentioned as Van and thereafter the said Van was altered and mentioned as a Car. The Tribunal has not considered the above said aspects and fixed the liability as against the second respondent.

8. Despite notice served to the respondents, no one appeared on behalf of them.

9. This Court, heard the learned counsel for the appellant and perused the materials on record. Upon hearing the learned counsel for the appellant and perusing the records, the point for determination in this appeal are:

- (i) Whether the first respondent vehicle was involved in this case?
- (ii) Whether the appeal is liable to be allowed or not?

10. In this case, the involvement of the vehicle itself is disputed by the second respondent and the first respondent, who is the owner of the vehicle, before the Tribunal was set *exparte*. In order to prove the case of the petitioner, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.7 were marked.



C.M.A.(MD).No.482 of 2014

On the side of the respondents, R.W.1 to R.W.3 were examined and Ex.R.1 to Ex.R.3 were marked and also Ex.X.1 was marked.

11. On a careful perusal of the documents, they reveal that initially the F.I.R was registered as against the unknown vehicle and thereafter, it was altered as Car bearing Registration No.TNS-5595. On a careful perusal of the F.I.R, it reveals that in the 11th line from the top the word is mentioned as “Van” in the 13th line it is mentioned as Van No. not known. Whereas in the 13th line in another F.I.R instead of Van mentioned as Car bearing Registration No.TNS-5595. According to the appellant, in the 13th line the name of the Van Number is unknown ie., Van number “தெரியவில்லை” has been altered. In this context, the evidence of P.W.1 shows that during cross examination, it is stated that he has not even filed the certified the copy of the F.I.R from the Judicial Magistrate Court and he did not know whether the First Information Report was altered from Van from the words “Van number not known” to Car No. TNS-5595 and also when a suggestion was made that Ex.P.1 – F.I.R is not a certified copy of the Court and also he stated that there is an interpretation in Ex.P.1 in respect of the Car. Therefore, on a careful perusal of the oral evidence and documents they would reveal that in the F.I.R itself, there are



C.M.A.(MD).No.482 of 2014

some corrections and some differences between the Ex.P1 and Ex.X1.

According to Ex.P.1 the word “Van” was strike out and written as பியட்கார்.

But Ex.X.1- F.I.R shows that initially it is mentioned as vehicle number not known and thereafter, mentioned as the vehicle No.TNS-5595, பியட்கார் driver name is Sanniyasi.

12. On a careful perusal of the documents, it show that to prove the negligence on the part of the driver of the first respondent the petitioner was examined but no independent witnesses was examined to prove the negligence on the part of the petitioner. The second respondent had denied the involvement of the vehicle itself thereby, the respondents probabilize their case. The Tribunal has not considered the above said aspects and held that the respondents have not examined the Investigation Officer who investigated the case and also not produced any witnesses. Though the criminal Court records show the vehicle involved in the accident, the petitioner has not examined any other witnesses, when the appellant has specifically taken a plea that the first respondent's vehicle was not involved in the accident. Other documents also show that initially F.I.R has been registered against the driver of the vehicle which number is not known. Now the number of the vehicle was



C.M.A.(MD).No.482 of 2014

mentioned in the F.I.R and it has to be answered by the petitioner. The petitioner has not even examined any other witnesses to prove the involvement of the vehicle in the accident. Therefore, the order passed by the Tribunal is liable to be set aside.

13. The learned counsel appearing for the appellant has relied upon the judgment of the Hon'ble Supreme Court in **2023 (1) TN MAC 481 (SC) (Reshma Kumari and others Vs. Madan Mohan and another)** wherein the Hon'ble Supreme Court categorically held that the negligence has to be proved by the petitioner. The another judgment of the Hon'ble Division Bench of this Court in **2011 (2) TN MAC 78 (DB) (New India Assurance Company Limited Vs. K.Ramesh Kumar and two others)** has held in Paragraph No.24 is as follows:

....24.In Ex.A.14 Discharge Summary, issued by the Ramakrishna Hospital, Coimbatore, it has been mentioned that the alleged accident occurred on 01.05.2002 at about 05.10 p.m., in the Coonoor-Kothagiri road while travelling in a motor cycle. Ex.A. 14 disproves the case of the 1st respondent/ claimant that the accident occurred when he and his friends were standing in Mettupalayam Kallar bus stop. Since



WEB COPY



C.M.A.(MD).No.482 of 2014

the appellant disputed the very involvement of the motor cycle insured with it, the 1st respondent could have examined himself and other eye witnesses to prove the accident, if it had really happened, but neither the 1st respondent nor other eye witnesses have been examined and for their non examination no acceptable explanation is offered.

14. On a careful perusal of the above judgment it is clear that when there are discrepancies between the records in respect of the accident, then the Court can decide whether the petitioner has to give proper explanation. In the case on hand also, in the F.I.R initially it is mentioned as “Van” and the same was strike out and the word “Car” was inserted and in the Ex.P.1 also it is mentioned as Vehicle Number “not known” and thereafter, the name of the vehicle was mentioned. Therefore, the petitioner has failed to prove the case and the same is liable to be dismissed. But the trial Court failed to consider the discrepancies in the F.I.R and erroneously allowed the petition and awarded compensation. Therefore, the order passed by the Tribunal is liable to be set aside by allowing this appeal.



C.M.A.(MD).No.482 of 2014

WEB COPY

15. In the result, this Civil Miscellaneous Appeal stands allowed and the order passed by the Motor Accidents Claims Tribunal, Additional District and Sessions Court and Special Court, Pudukkottai, in M.C.O.P.No.935 of 2001, dated 24.11.2010 is hereby set aside and the claim petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

18.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Court and Special Court,
Pudukkottai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.482 of 2014

P.DHANABAL,J.

ebsi

C.M.A(MD)No.482 of 2014

18.03.2024