



C.M.A.(MD) No.1104 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1104 of 2017

and

C.M.P.(MD)No.11224 of 2017

M/s.United India Insurance Co. Ltd.,
Through its Branch Manager,
D.No.52, South Masi Street, Madurai.

... Appellant

Vs.

1.R.Velammal,
2.R.Rani,
3.R.Rohini,
4.M.S.Peter.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 14.07.2017 passed in M.C.O.P.No.1609 of 2008 on the file of the Motor Accidents Claims Tribunal/ Sessions Court, Communal Clash Cases Court, Madurai.

For Appellant : Mr.N.Dilip Kumar

For Respondents : No appearance



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JUDGMENT

The instant appeal has been filed challenging the finding on negligence and liability.

2. The respondents 1 to 3 filed a claim petition stating that on 18.09.2004, while the deceased was riding his two-wheeler, a car belonging to the fourth respondent herein bearing registration No.MDT 9319 came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, the deceased sustained fatal injuries.

3. The fourth respondent herein filed a counter stating that the car bearing Registration No.MDT 9319 was never involved in the accident and that he never had a driver and used to drive the car himself; and that initially, in the claim petition and in the First Information Report, the vehicle's registration number was mentioned as TMD 1319 and subsequently, the registration number was changed in the claim petition.

4. The appellant filed a counter stating that the averments in the



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claim petition were not true; and that they ought not to have been impleaded six years after the filing of the claim petition on the basis of the averments, which were not true and substantiated.

5. The respondents 1 to 3/claimants examined two witnesses and marked Exs.P1 to P32. The first respondent examined himself as R.W.1 and marked a copy of the RC Book as Ex.R1.

6. The Tribunal found that the car belonging to the fourth respondent, insured with the appellant, was involved in the accident and directed the appellant to pay the compensation of Rs.6,08,934/-.

7. The learned counsel for the appellant/Insurance Company submitted that the car insured with the appellant was not involved in the accident; that the claim petition was originally filed showing the registration number of the vehicle involved in the accident as TMD 1319 and subsequently, the registration number was altered without any basis; and that the First Information Report against the driver of the said vehicle/unknown person was closed as it could not be deducted; and therefore, the Tribunal ought not to have been awarded compensation on



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the basis of the evidence of P.W.2, whose version is unbelievable.

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8. Though notice to the respondents 1 to 3 has been served and a learned counsel had filed vakalat, there was no representation for the respondents 1 to 3 when the matter was called on 19.08.2024, 29.08.2024 and 09.09.2024. Even today, there is no representation for the respondents 1 to 3/claimants.

9. The only point for consideration in the instant appeal is '*whether the finding of the Tribunal holding that the appellant is liable to pay the compensation is justified?*'

10. This Court has carefully considered the evidence on record and the submissions made on the side of the appellant.

11. The accident took place on 18.09.2004 and the claim petition was filed on 11.10.2006. In the original claim petition, it is seen that the respondent was shown as one Xavier and the insurance company was mentioned as not known. Thereafter, the name of the fourth respondent was included instead of the said Xavier. The appellant was also impleaded



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as a party, pursuant to the application made by the claimants in I.A.No.15 of 2012, which was allowed on 04.04.2012. There is absolutely no evidence as to why in the claim petition, the wrong registration number of the vehicle involved in the accident was mentioned. It is also seen that in the FIR lodged by P.W.2, who according to the claimants, was an eyewitness to the occurrence, had mentioned the registration number of the vehicle as TMD 1319. It is also an admitted fact that the said FIR was closed. However, since the final report of the Police was returned by the Magistrate, the claimants could not file a protest petition.

12. Even if the report of the Police is ignored, this Court is of the view that the claimants ought to have explained as to why a wrong registration number was mentioned in the claim petition. Though P.W.2 had stated in his deposition that he had informed the Police that the car had a sticker/indication that it belonged to a Judge, there is no reference to the said fact in the FIR. Strangely, the claimants have not marked the FIR. Even in the claim petition, there is no reference about any sticker in the car. That apart, if P.W.2 was aware of the correct registration number of the car and his version that he told the Police, the correct registration number, is accepted there is no reason why the registration number was



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mentioned wrongly in the claim petition. This Court is of the view that in the absence of any explanation given by the claimants or by the eyewitness as to why the wrong registration number was mentioned in the claim petition, which was filed two years after the accident and as to how they realised that the said vehicle insured with the appellant was involved in the accident later, the version of the claimants, which is highly doubtful cannot be accepted.

13. Though it is the case of P.W.2 that a grey-colored ambassador car was involved in the accident, the Registration Certificate-Ex.R1 produced on the side of the fourth respondent/owner of the vehicle indicates that the color of the car was white. Ex.R1 is a xerox copy. However, the award of the Tribunal indicates that the said copy was compared with the original. Therefore, there is no reason to disbelieve the contents of Ex.R1.

14. Further, it is seen that though P.W.2 claimed that he was a pillion rider, in which the deceased was riding. The police report suggests that in the version given to the Police by P.W.2, he had stated that he was a rider and the deceased was a pillion rider. The inherent contradiction in



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the evidence of P.W.2 makes his version unreliable. In the absence of any other evidence, this Court is of the view that the claimants have not established the fact that the insured vehicle was involved in the accident.

15. That apart, merely because the fourth respondent had not responded to the notice issued by the claimants, it cannot be said that the contents of the said letter Ex.P15, in which they had sought particulars of the insurance of the car, are true. The fourth respondent had also examined himself as R.W.1 and explained as to why he had not responded to Ex.P15, stating that since the case was pending before the Tribunal, he had chosen not to respond to the said letter. The claimants have not discharged their initial burden of establishing the involvement of the insured car in the accident. Therefore, the award of the Tribunal holding that the vehicle of the fourth respondent insured with the appellant was involved in the accident is liable to be set aside.

16. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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17. It is open to the appellant to seek refund of any money deposited by filing suitable application.

18.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal/ Sessions Court,
Communal Clash Cases Court, Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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