

(2009) 02 MAD CK 0096
In the Madras High Court
Case No : C.M.A. No. 166 of 2003

The New India Assurance Company Ltd.	APPELLANT
Vs	
Sekar and Sivakumar	RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2010) ACJ 2390 : (2009) 2 LW 927

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : S. Manohar, for the Appellant; S. Vadivel, for A. Ashokkumar, [R-1], for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—In the claim petition, the following are stated:

1. (i) The petitioner is aged about 39 years who was earning about Rs. 10,000/- p.m. by means of his being a Managing Partner in some finance companies. On 5.12.1999 at about 2.30 p.m. while he was standing in Post Office but stop in Cuddalore, Bharathi Road, a motor cycle TVS Suzuki, bearing Registration No. TN-31-B-4950, insured with second respondent was driven in a rash and negligent manner by its driver, dashed against the claimant and hence he suffered multiple injuries and fractures and hence a sum of Rs. 25 lakhs is claimed as compensation.

2. In the Counter filed by the Insurance Company it is stated as follows:

2.(i) The insurance for the vehicle and the aspect of possession of valid driving licence by the driver of the vehicle on the date of accident are denied. The claimant's age, occupation, monthly income, injuries sustained and the nature of disability are also denied. The compensation claimed is excessive and exaggerated and hence the claim petition has to be dismissed.

3. In the additional Counter filed by the Insurance Company, it is specifically denied that the road accident had taken place on 05.12.1999 and the first respondent vehicle bearing Registration TN-31-B-4150 hit the claimant. Both the claimant and the vehicle owner have colluded together to cause loss to the insurance company. The claim is fictitious and imaginary one. The claimant lodged F.I.R two months after the alleged accident. The entire criminal proceedings were managed by the parties in collusion to give a colour of reality for the alleged accident. The claimant is put to strict proof that the accident has really taken place in the manner alleged in the petition.

4. The Tribunal after discussing the factual aspects as to the accident, has reached a conclusion that the driver of the Motor Cycle was negligent at the time of accident. Liability has been anchored on the owner of the vehicle . After finding that the accident had taken as per the version of the claimant, the Tribunal proceeded to assess the compensation payable to him at Rs. 10,08,350/- along with interest and costs, by this appellant. The said award is challenged before this Court.

5. The accident is reported to have taken place on 5.12.1999 at 2.30 p.m. at Post Office bus stop in Bharathi Road at Cuddalore. However, after about two months only F.I.R. came to be lodged in the police station. Two aspects have to be found out in this proceeding on the available materials. Firstly, the reason for the delay in lodging complaint after two months and second is whether the accident had taken place as per the version of the claimant.

6. In the F.I.R., the claimant has stated that immediately after the accident, he was admitted to a private clinic for first aid and then he was removed to Puthur for treatment, that the occurrence was witnessed by Prakash, Radhakrishnan and others and that since he had gone to Puthur and other places for medical treatment, he could not lodge the complaint.

7. Even though two names have been specifically mentioned in the F.I.R., both of them were not brought to the witness box to say that the accident took place on 5.12.1999 as narrated by the claimant. In the chief examination, the claimant did not say about the delay in lodging the F.I.R. However , in the cross examination, he says that at the outset he was admitted to Tamil Nadu Hospital and since he was unable to spend money for treatment in the said Hospital, he went to Puthur and there he took treatment for three months and again he went to Tamil Nadu Hospital and only after taking treatment in Tamil Nadu Hospital for second time, he lodged F.I.R., that he had no person for assistance to lodge F.I.R, and that is the reason why he could not do the same in time, that Prakash and Radhakrishnan admitted him in the hospital and left, and afterwards he did not meet them. In another portion of the cross-examination he says that in the Tamil Nadu Hospital he obtained discharge summary on two occasions, but they are missing and it is false to suggest that no such discharge summary was issued by the Tamil Nadu Hospital. He also adds that immediately after the accident, he was admitted to a clinic belonging to Dr. Jawahar Kennedy and he does not know

who admitted him to the said clinic, that one person was working in his office.

8. The above portions in the deposition of the claimant would amply show that he has got persons to make information to the police as to the accident, that he had got adequate opportunities to lodge the complaint after the accident and that he did not avail any of the opportunity to approach the police. In this regard, there is no option for the Court except to hold that the reason for the delay in lodging of F.I.R has not been properly shown by the claimant. I hasten to add that the parties in the civil proceedings are not required to explain their contentions beyond any reasonable doubt, as required in a criminal case, but suffice it to show that the contentions stand convincing. Such circumstance is not available in this matter.

9. One Sivakumar has shown to be the accused person in the criminal case, against whom S.T.C. No. 2422 of 2000 was registered before the Judicial Magistrate No. II, Cuddalore and the Charge Sheet was laid under Sections 279 and 338 I.P.C. In the said case on 18.10.2000, the said Sivakumar admitted the offence and paid a fine of Rs. 1,000/-. A scrutiny of the case records would show that the said Sivakumar is the vehicle owner as mentioned in the claim petition. Even though he was accused of the offence, he filed his counter as if some other person was driving the vehicle at the time of accident. Even though the claimant placed reliance upon the document Ex.P.10, which is the Judgment of Criminal Court, showing admission by the accused of the offence, the Tribunal Judge has not adverted to it, who simply concluded the matter that the driver/first respondent/vehicle owner was responsible in the accident.

10. As far as the admissibility of a Criminal Court Judgment in a civil proceedings is concerned, it is the consistent view of this Court that it cannot be relied upon on its face value and some other independent evidence has to be put in by the person who tries to establish the fact before the Court. In 2004(2) TNMAC 115 (DB) [Metropolitan Transport Corporation Ltd. v. G. Gnanam @ Gnanamurthy] a Division Bench of this Court has held that the Tribunal is not correct in relying on the penalty paid by the driver before the Criminal Court to fix the entire responsibility on the driver.

11. After elaborately having discussed this point on the basis of decision of Division Bench of this Court and the decisions of other High Courts, this Court in 2004(2) TN MAC 101 [N. Sathidevi and Ors. v. Giridharan and Anr.] has held that the admission made in the criminal proceedings cannot be relied on but the case of claimants have to be established independently before the Tribunal and in the said case except the admission made by the driver before the Criminal Court, absolutely there is no evidence to conclude that the auto involved in the accident. The further observation in the said decision is as follows:

22. From the above decisions, it is clear that the confession made before the Criminal Court is an admission against his interest and the same has to be taken into account in rendering a decision on the relative stands taken by the parties in

the controversy. According to the above said decisions, if the party who made admission before the Criminal Court wants the Tribunal not to rely on it, he has to explain as to why and under what circumstances, such evidence was given before the Criminal Court contrary to the real fact.

12. While an identical situation arose before me in C.M.A. (NPD) No. 2789 of 2002 [National Insurance Co. Ltd., Gobichettipalayam v. Kalaiselvi and Ors.] decided on 26.08.08, I have expressed my view that the Judgment of the Criminal Court indicating the responsibility of the Driver, contributing negligence on him cannot be considered to be a deciding factor in a Civil proceeding. But, in case, the Court is able to find some corroborative materials besides the decision of the Criminal Court, then there is no stumbling block to reach a conclusion, fixing responsibility on the driver. In the absence of any other piece of evidence, the Court cannot solely rely upon the Judgment of the Criminal Court and to reach a decision that the driver was at fault. It is also observed thus:

12. Adequate evidence shall be brought to record to show the negligence on the part of the driver and if the evidence flows only from the Judgment of the Criminal Court convicting the accused/driver, it does not have any probative value. Mere acceptance of the guilt by the driver will not by itself establish, the fact that he was the actor of crime as observed by the Division Bench of this Court. The Court has to discern circumstances under which the driver admitted the guilt before the Criminal Court which would lead to the finding of real factors.

13. In my another decision reported in 2009(1) M.L.J. 363 [K. Subramani v. Director of Animal Husbandry, Chennai], I have opined as mentioned above.

14. Adverting to the facts of this case, except the oral testimony of the claimant, there is no other piece of evidence to show that the accident took place in the manner as described by him. As far as the Criminal Court Judgment is concerned, which is an outcome of the facts as to the accident, no credence could be attached to it since there is no discussion of the facts as to the accident. As per the consistent view of this Court, the admission of the driver before the Criminal Court cannot be relied upon in a civil proceedings as a sole factor to establish the fact of accident unless the said admission is proved to be false or incorrect. Apart from the Criminal Court Judgment, even if it was delivered on merits, the party who relies upon the facts leading to the accident has to establish before the Civil Court that the accident took place as portrayed by him. If the Criminal Court Judgment is pressed into service, then there is no obstacle for the Court to accept other corroborative materials to strengthen the same.

15. As for the circumstances of this matter, as adverted to supra, the claimant has woefully failed to show that the accident took place as narrated by him in the F.I.R. He has not explained the delay in lodging the F.I.R. as to the accident at appropriate time and the loss of time remains untouched. This Court hastens to add that as in a criminal case where standard of proof is required otherwise, the Tribunal or this Court cannot expect a party to explain the delay in lodging the

F.I.R. But once reliance is placed upon the contents in the F.I.R., the back drop of the same leads the Court to render a judgment, of course on admission of the accused, there is no wrong on the part of a Civil Court to expect that the allegations contained in the F.I.R. are to be shown to be true. Had the claimant stated anything in his petition or in his oral evidence convincingly as to the delay, then the Court may consider and conclude that the delay was explained. In view of absence of any material to discern that the admission on the part of the accused before the Criminal Court was voluntary one, there is no embargo for the Court to treat the admission to be not genuine.

16. When a Division Bench of this Court took up a discussion on an identical matter in a case reported in 2007 (2) TN MAC 399 (DB) [Oriental Insurance Co. Ltd., v. K. Balasubramanian] it has observed that the judgment of Criminal Court on admission can constitute best evidence when facts are not proved to be incorrect or false. The operative portion of the Judgment goes thus:

It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal nor relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of Course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence.

17. As per the observation in the case supra, even though the judgment of the Criminal Court is an outcome of admission by the accused, if the facts were proved to be incorrect or false then there is no need for the Court to rely upon it. In the considered opinion of the Court, the admission is tainted with incorrect facts and the same could not form basis for the Court to make observation in favour of the claimant.

18. In the present case on hand the claimant has miserably failed to examine any of the witnesses before the Tribunal who have allegedly seen the accident. In the absence of any other supporting factors, mere oral evidence of the claimant and the Criminal Court Judgment on admission of the accused will not stand for a minute's scrutiny and it could not be held to support the claim. The fact of delay in lodging F.I.R. also lends backing to this view. In such view of this matter, it has to be necessarily observed that the accident has not taken place as pleaded by the claimant.

19. In the light of the observations above, on the basis of the decisions of this

Court and other High Courts, it is held that the claimant has not shown that the accident as stated in the claim petition, by means of which he suffered injuries. In the absence of such demonstration, the claimant has to be non-suited for the relief prayed for. In my considered view, the award passed by the Tribunal is not sustainable which deserves to be set aside and accordingly it is set aside.

20. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Connected M.P. is closed. The appellant is permitted to withdraw the compensation amount if it was deposited before the Tribunal.