

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.08.2016

PRONOUNCED ON: 23.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)Nos.1571 and 1572 of 2012

and

M.P.No.1 of 2012

V.Thirupathi

... Petitioner in both CRPs

Vs.

The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

(Salem Div.II),

Dharmapuri.

... Respondent in both CRPs

Common Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 09.03.2012 made in I.A.Nos.41 and 42 of 2012 in MCOP.No.266 of 2005, on the file of the Motor Accident Claims Tribunal/Sub-Court, Namakkal.

For Petitioner : Mr.R.Marudhachalamurthy
(In both CRPs)
For Respondents : No Appearance
(In both CRPs)

COMMON ORDER

The petitioner/claimant in MCOP.No.266 of 2005 is the Civil Revision Petitioner before this Court, challenging the order of dismissal in I.A.No.42 of 2012 in MCOP.No.266 of 2005, on the file of the Subordinate Judge, Namakkal.

2.The case of the petitioner/claimant is that he has filed the above MCOP.No.266 of 2005 for claiming a sum of Rs.7,00,000/- for the accident occurred to the petitioner and he sustained multiple grievous injuries all over his body including severe fracture on his right radius, left forearm, left tibia, right foot and left patella, against the respondent/Transport Corporation.

3.The petitioner claiming that when on 14.02.2005 at about 3.45 a.m. while the petitioner was travelling in a TSTC Bus bearing Registration No.TN-29-N-1508 near KAKC Petrol Bunk on Krishnagiri to

Bangalore main road. At that time, the driver of the TSTC bus drove the same without observing road traffic rules in a rash and negligent manner dashed behind a right side of the lorry, which was going in front of the bus and caused this accident. Due to the said accident, the petitioner sustained multiple grievous injuries all over his body including severe fracture on his right radius, left forearm, left tibia, right foot and left patella. This accident had occurred only due to the rash and negligent act of the driver of the TSTC bus bearing Registration No.TN-29-N-1508. Hence, he claimed the amount of Rs.7,00,000/-. While pendency of the above MCOP.No.266 of 2005 and such of the trial, he has filed an application in I.A.No.41 of 2012, to re-open the petition for marking the medical bills and also filed I.A.No.42 of 2012 for re-call PW1 for marking the documents.

4.In this petition, the petitioner/claimant states that though the case is posted for respondent's side evidence, but at the time of enquiry, he failed to mark the medical bills. Therefore, he sought to re-open the case and re-call the PW1 for marking the medical bills. Therefore, he sought for the relief in the above two Interlocutory Applications.

5.No counter affidavit has been filed in the above I.A.Nos.41 and

42 of 2012 in MACTOP.No.266 of 2005.

6.Considering the case of the petitioner the learned Judge dismissing the application for re-opening the case and the petition has been dismissed with cost. Challenging the said order, he filed the civil revision petitions before this Court.

7.Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner.

8.I very much wondering the order passed by the learned Subordinate Judge, Namakkal in the order in I.A.No.41 of 2012 and the learned Judge has passed the only one paragraph order as follows:

“No counter for the respondent. On perusal of records it came to know that the medical bills were already marked at Ex.p6 through pw1 on 1.7.09. There is the revival in the affidavit of the petitioner that some other medical bills are available with the petitioner apart from Ex.P6. Hence there is no necessity to re-open the petition. Petition is dismissed with cost.”

9.Admittedly, the petitioner/claimant has filed the application on

the date of evidence of the respondent's side, but he has failed to mark the medical bills obtained from the hospitals. It is common knowledge that if a person sustained injury due to the accident, it is bounded duty to mark all the medical bills for substantiating his claim before the Court. But, at the time of taking evidence of PW1, he failed to mark the documents, but later on he filed the application only on the date of respondent's side evidence only, that too only for marking the medical bills.

10. In entertaining the said application, there was no prejudiced would be caused to the respondent. The Tribunal namely the Subordinate Judge, Namakkal would have applied his mind in a proper manner, considering the petitioner/claimant's case, since he sought for relief only to re-open the case and to re-call the PW1 for marking medical bills. The learned Judge also consider that unless he has marked the medical bill definitely the petitioner/claimant could not get the claim and he sought for in the above MCOP.No.266 of 2005.

11. Apart from this, when no counter has been filed by the respondent, the Court can pass orders on merits, but on seeing the above order in I.A.No.41 of 2012 dated 09.03.2012, it is made clear that only one line order has been passed stating that the medical bills

already marked as Ex.P6 on 01.07.2009, there is a revival in the affidavit of the petitioner that some other medical bills are available with the petitioner apart from Ex.P6. Hence, there is no necessity for re-open the case.

12.Time and again, this Court and the Hon'ble Apex Court very categorically held that while passing the orders in the I.As, the Courts below should have shown their judicial view and pass suitable orders themselves the sympathetically viewed and the sustained heavy injury in the accident done by the respondent/Transport Corporation. Therefore, in the interest of justice, this Court warranting interference in the order passed in I.A.Nos.41 and 42 of 2012 and accordingly, that order liable to be set aside.

13.In the result:

(a)both the civil revision petitions are allowed, by setting aside the order in I.A.Nos.41 and 42 of 2012 in MCOP.No.266 of 2005, dated 09.03.2012, on the file of the Motor Accident Claims Tribunal/Subordinate Court, Namakkal.

(b) the learned Subordinate-Judge, Namakkal is

hereby directed to re-call the PW1 sought for in I.A.Nos.41 and 42 of 2012, thereafter to dispose the MCOP.No.266 of 2005, within a period of two months from the date of receipt of a copy of this order, on day today basis without giving any adjournments to either parties. Both the parties are hereby directed to co-operate for early disposal of the suit.

14.Accordingly, both the civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.12.2016

vs

Internet:Yes

Index:Yes

Note:Issue order copy on 25.01.2017

To

The Subordinate Judge,
Namakkal.

M.V.MURALIDARAN,J.

VS

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and
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