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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1472 of 2005

Ramalingam

... Appellant

Versus

1. Eswaran

2. Mohan

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree and dated 14.12.2004 made in MCOP.No.210 of 2000 on the file of Motor Accident Claims Tribunal, (Principal Subordinate Judge), Cuddalore.

For Appellant : Mr. D. Baskar

For Respondents : Ms. T.R. Gayathri (for R1)
for M/s.Sarvabhauman Associates

J U D G M E N T

The claimant has come forward with this appeal aggrieved by the order dated 14.12.2004 passed in MCOP No. 210 of 2000, by which the Tribunal dismissed his claim petition on the ground that the claimant has not established that he had met with any accident or sustained any injuries thereof.

2. According to the claimant, he is a native of Cuddalore District. During the month of November 1998, he went to Bangalore, where his son is residing. On 15.11.1998 at about 16.30 hours, when the claimant was walking on the pavement in Vatal Nagaraj Road in front of Sujatha Theater, the driver of a two wheeler - TVS Suzuki Motor Cycle bearing Registration No. TCS 8886 driven it, in a rash and negligent manner and hit the claimant. In the impact, the claimant sustained fracture and bleeding injuries and he was admitted in Victoria hospital, Bangalore for 8 days as in-patient. Due to the injuries sustained in the accident, he could not perform his duties as before. According to the claimant, the sole respondent in the claim petition is responsible for the accident and therefore he prayed for compensation of Rs.1,00,000/-.



3. The sole respondent in the claim petition has filed a counter affidavit repudiating the averments made in the claim petition. It was specifically contended that the respondent had sold the vehicle in question on 10.02.1996, at least two years prior to the accident that took place on 15.11.1998, in favour of one Mohan, Son of Periyasamy and therefore the said Mohan is the registered owner of the two wheeler. Further immediately after sale of the two wheeler, the respondent also executed necessary documents on 10.02.1996 itself and handed over the vehicle to him. Above all, in the counter affidavit, it was stated that the injuries said to have sustained by the claimant has not affected his normal work and the disability said to have caused to the claimant is false. The respondent therefore prayed for dismissal of the claim petition.

4. In the light of the above stand taken in the counter affidavit, the claimant filed an application to implead the said Mohan, registered owner of the two wheeler and the application was allowed thereby the said Mohan was impleaded as second respondent in the claim petition. However, the second respondent did not contest the claim petition and he was set exparte.

5. Before the Tribunal, the claimant examined himself as PW1 and Dr. Raju as PW2 besides Exs. P1 to P7 were marked. On behalf of the respondents, the first respondent examined himself as RW1 and Ex.R1 and R2 were marked. The Tribunal, on consideration of oral and documentary evidence, concluded that the claimant said to have taken treatment soon after the accident at Victoria Hospital, Bangalore. Even as admitted by the claimant, he had written a letter to the police officials regarding the accident only after 8 days of the accident and based on the same, the case in Crime No. 339 of 1998 came to be registered for the offences punishable under Section 279 and 337 of Indian Penal Code. In the first information report, the description of the vehicle was indicated as a Scooter bearing Registration No. TCS 8886, whereas, in the claim petition, the claimant contended that he met with an accident by virtue of the negligent driving of a two wheeler - TVS Suzuki Motor Cycle. The Tribunal further rendered a finding that in the claim petition, the claimant has stated that he met with the accident when he was walking on the pavement, however, in his complaint given to the police officials, he had stated that when he was crossing the road towards the Northern side, the Scooter was driven by the driver from East to West and hit him. Pointing out these discrepancies, the Tribunal disbelieved the version of the claimant that he met with an accident and sustained injuries. Therefore, the claim petition was dismissed



by the Tribunal.

6. The learned counsel for the appellant would contend that there was an accident in which he sustained injuries. In connection with the said accident, a case was registered in Crime No. 339 of 1998 for the offences punishable under Section 279 and 337 of Indian Penal Code, which was marked as Ex.P1. Further, the medical records issued by Victoria Hospital were marked as Ex.P2. The Motor Vehicle Inspector's report was marked as Ex.P4, which would clinchingly prove that there was an accident in which the claimant sustained injuries. Above all, the claimant examined the Doctor as PW2, who deposed that he had issued the Wound Certificate under Ex.P6 assessing the disability of the claimant at 60%. In fact, on the basis of the counter filed by the second respondent, the claimant has impleaded the registered owner of the second respondent, who, inspite of notice, did not contest the Claim Petition. Therefore, the Tribunal, instead of drawing an adverse inference as against the second respondent, dismissed the claim petition. The Tribunal also disbelieved Ex.A-3, certificate given by Inspector of Police, Traffic Inspection Squad, Bangalore, wherein the details of the vehicle and the description of driver have been clearly furnished. However, the Tribunal, without taking note of the documents filed by the claimant erroneously dismissed the claim petition and it calls for interference by this Court.

7. The learned counsel for the first respondent would only contend that as on the date of accident, the first respondent was not the registered owner which was also taken note of by the Tribunal. Therefore, the counsel for the first respondent prayed for dismissal of the appeal in so far as the first respondent is concerned.

8. Heard the counsel for both sides and perused the materials placed on record. The claimant claims that he met with an accident on 15.11.1998 when he was walking on the pathway. Even in the description of the injuries, it is stated that he sustained a fracture in right leg and stitching injuries in the forehead. The description of the vehicle was given as TVS Suzuki Motor Cycle bearing Registration No. TCS 8886. However, the claimant has given a complaint to the police officials in connection with the accident only after ten days and the reason for the said delay has not been explained. If really an accident had occurred, the claimant ought to have given the complaint immediately or his statement would have been recorded during his hospitalisation. But that was not done and only on the basis of a letter written by the claimant to the police officials which was sent by registered post, the complaint came to be registered. Above all, in the complaint,



the claimant had given the description of the vehicle as a Scooter. Further, in the complaint, it was stated that when he attempted to cross the Road towards the Northern side, the Scooter, which came from East to West had hit him. This is quite contrary to the statement of the claimant made in the claim petition. This statement of the claimant only gives an impression that the claimant did not meet with an accident and the injuries sustained by him are not as a result of the so-called accident. Even though the Doctor was examined by the claimant, his deposition is only with respect to the injuries sustained by the claimant and not on the fact that the injuries are result of a motor accident. In such circumstances, this Court finds that the claimant has failed to establish his case for payment of compensation beyond any reasonable doubt. The Tribunal has correctly appreciated the discrepancies in the deposition of the claimant and refused to award any compensation in his favour.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

klt

To

The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Cuddalore.

+1cc to Mr.D. Baskar, Advocate SR.No.69727

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.69867

C.M.A.1472 of 2005

GP(CO)
GMY(03/10/2019)