



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1723 of 2008

S.Rajendran

...Appellant/Petitioner

Vs

1. S.Gunasekar

2. The Oriental Insurance Company Ltd.,
Motor III Party Claims Office,
No.8, Esplanade,
Chennai - 108.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accidents Claims Tribunal, Sub Court, Poonamallee in M.C.O.P.No.541 of 2003 dated 27.02.2007.

For Appellant : Mr.J.Mahalingam

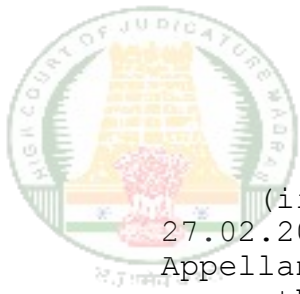
For Respondents : Mr.S.Arun Kumar for R2
R1-Notice Dispense with
vide court dated 25/06/2018

JUDGMENT

The instant appeal has been filed by the claimant challenging the Award dated 27.02.2007 passed by the Motor Accidents Claims Tribunal, Sub Court, Poonamallee in M.C.O.P.No.541 of 2003.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) It is the case of the Appellant that he sustained injuries while travelling in an Auto, bearing Registration No.TN-51-U-2403 on 05.07.2003. He preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.541 of 2003 seeking a compensation of Rs.4,00,000/- against the owner and insurer of the vehicle, who are 1st and 2nd respondents herein respectively.



(ii) The Motor Accidents claims Tribunal by its Award dated 27.02.2007 in M.C.O.P.No.541 of 2003 dismissed the claim of the Appellant on the ground that the Appellant has not been able to prove the accident and prove the involvement of the auto rickshaw bearing Registration No.TN-51-U-2403 in the accident.

(iii) Aggrieved by the Award dated 27.02.2007 passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.541 of 2003, the claimant has filed the instant appeal.

3.Heard, Mr.J.Mahalingam learned Counsel for the Appellant and Mr.S.Arun Kumar, learned Counsel for the second respondent Insurance Company.

4.According to the learned Counsel for the Appellant, the Tribunal failed to appreciate the evidence of PW1 and PW3 while deciding the question as to whether the first respondent's vehicle was involved in the accident.

5.According to him, PW1 had clearly deposed that on 05.07.2003 at about 02.00 A.M, while he was travelling as a passenger in an Auto Rickshaw, the driver of the Auto Rickshaw drove the same in a rash and negligent manner and the said Auto Rickshaw dashed against the van which was parked by the side of the road and due to which, the Appellant sustained fractures in both bones of left leg and other serious multiple injuries all over the body.

6.According to the learned Counsel for the Appellant, the First Information Report was registered on 06.07.2003 itself against the driver of the auto rickshaw. According to him, the evidence of PW3 who was a co-passenger in the Auto Rickshaw corroborated the evidence of PW1, the Appellant herein.

7.According to the learned Counsel for the Appellant, the driver of the Auto Rickshaw was not examined by the second respondent as a witness before the Tribunal. According to him, the Tribunal has erroneously dismissed the claim of the Appellant by erroneously giving a finding that there are contradictions between the evidence of PW1 and PW3.

8.Per contra, the learned Counsel for the second respondent drew the attention of this Court to the findings of the Tribunal and submitted that PW1 has deposed that the Auto Rickshaw in which the Appellant was travelling collided with a parked van, whereas PW3 has deposed that the Auto Rickshaw collided with a van which was coming from the opposite direction.

9.Further, the learned Counsel submitted that in the First Information Report, the registration number of the Auto Rickshaw



10. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels, observes the following:

(a) As rightly pointed out by the learned Counsel for the second respondent, there are several contradictions in the evidence let in by the Appellant before the Tribunal. The complaint was given to the police only by the Appellant. The Appellant was travelling in the Auto Rickshaw which was allegedly involved in the accident. But the first information report registered by the police based on the complaint given by the Appellant does not disclose the registration number of the Auto Rickshaw and the name of the Auto driver is also not correct.

(b) PW1 has deposed that the Auto Rickshaw collided with a stationery van, whereas PW3, the eye witness, who was also a co-passenger in the Auto Rickshaw has deposed that the Auto Rickshaw collided with a van which came from the opposite direction. The Tribunal has considered the evidence of PW1 and PW3 and has given a clear finding that the statement of PW1 contradicts the statement of PW3.

(c) Further, the Appellant has also not given the particulars of the vehicle as well as the name of the driver in his complaint to the police based on which, the police has registered the First Information Report against the driver and the owner of the auto rickshaw.

(d) The Appellant cannot, now at this stage, raise the plea that the second respondent has not examined the Auto Rickshaw driver, that too, when the evidence produced by him before the Tribunal is contradictory and does not establish that only due to the rash and negligent driving of the Auto Rickshaw by its driver, the accident had happened.

11. In the light of the above observations, this Court is of the considered view that the Tribunal has rightly come to the conclusion that the Appellant has not been able to establish that only due to the rash and negligent driving by the driver of the Auto Rickshaw insured with the second respondent, the accident had happened which resulted in injuries sustained by the Appellant.



WEB COPY

12. In the result, there is no merit in the instant appeal. Accordingly the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arb/msr

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

2. The Record Clerk,
VR Section,
High Court, Madras.

+2cc to Mr.J.Mahalingam, Advocate sr.no.66540
+1cc to Mr.S.Arunkumar, Advocate sr.no.66363

C.M.A.No.1723 of 2008

nr 27/11/2018