

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.663 of 2005

Ravi ... Appellant/ Petitioner

Versus

1. T.K.Sharfudeen
2. The Divisional Manager,
National Insurance Company Ltd.,
Divisional Office, 40, Bank Road,
Kannur-670 001.
3. A.Raju
4. The Branch Manager,
Oriental Insurance Co. Ltd.,
Branch Office, Lakshmi Towers,
Adjacent to Bangalore Hospital
R.V.Road, Bangalore. ... Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.07.2004 made in M.C.O.P.No.1927 of 2002 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate No.I), Dharmapuri at Krishnagiri.

For Appellant : No appearance

For 1st and 3rd Respondent: ----

For 2nd Respondent : Mr. M.Krishnamoorthy

For 4th Respondent : Mr.Sivakumar

J U D G M E N T

Today, neither the counsel for the appellant nor the appellant present. The learned counsel for the respondents 2 and 4 are present before this Court.

2. This Civil Miscellaneous Appeal has been filed in the year 2005 and it is pending for more than 13 years and the matter is posted today, at the instance of the learned counsel for the appellant. Since the appellant was not present before this Court today, the order is passed on perusal of the records.

3. This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 21.07.2004 made in M.C.O.P.No.1927 of 2002 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate No.I), Dharmapuri at Krishnagiri.

4. In the grounds of appeal, the appellant has stated that the trial Court has failed to appreciate the fact that the accident had occurred only due to the rash and negligent driving on the part of the 1st respondent and only out of threatening by the police, the appellant had paid the fine amount. The other grievance made in the appeal is that the evidence of PW2 who is a Doctor was not considered by the Tribunal. The other aspects regarding the nature of injury, the accident itself and also the negligent act on the part of the respondents and the proper appreciation of evidence by the Tribunal are disputed.

5. Heard the arguments on the side of the Respondents 2 and 4.

6. On a perusal of judgement passed by the Tribunal, it is observed that the accident had occurred on 25/26.07.2002, at about 00.45 hours, when the claimant was driving a Tempo van bearing Registration No.KA 05 P 2854 owned by the 3rd respondent with load, the vehicle belonged to the 1st respondent being a lorry with Registration No. KLN 4560 which was driven in a rash and negligent manner and hit behind the vehicle driven by the claimant and that the claimant sustained severe injuries and inspite of treatment, he sustained disability and he claimed a sum of Rs.3,00,000/- as compensation.

7. The respondents 1, 3, and 4 were set exparte before the Tribunal. The 2nd respondent has filed a counter statement denying the facts mentioned in the claim application. The 2nd respondent also denied the other aspects like age, occupation and income earned by the claimant.

8. The Tribunal after analysing the evidence and documents placed before it, had discussed the manner of accident. Before the Tribunal, the documents filed by

the petitioner were marked as Ex.P1 to Ex.P12. Based on the FIR Ex.P1, the appellant herein who is the claimant has admitted the offence and paid the fine amount. Hence, the Tribunal has observed that when the claimant had admitted the offence of rash and negligent driving and paid the fine amount, he cannot claim any compensation. Based on the evidence and also the documents placed before it, the Tribunal had very much assessed the fact that the complaint was preferred by the 1st respondent driver one Sukumar. The Tribunal has also observed that in the said complaint, it has not been stated that the lorry was coming in the opposite direction and there was also no fact that the said vehicle was driven by the claimant and it was overtaken by the other vehicle. Hence, based on the fact that the complaint was given by the 1st respondent and also the admission made by the appellant before the criminal court and paid the fine amount, it has not been proved by the claimant before the Tribunal that the accident had occurred only due to rash and negligent driving on the part of the driver of the lorry which came in opposite direction. Hence, based on the evidence, the Tribunal has dismissed the claim application.

9. In view of the above and on perusal of the evidence and documents and the arguments advanced by the learned counsel for the respondents 2 and 4 and also the admission of offence by the claimant before the Criminal Court and paid the fine amount, this Court is of the view that the order of the Tribunal does not require any interference. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS vii)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate No.I),
Dharmapuri at Krishnagiri

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No. 71821

+1cc to Mr.Sivakumar, Advocate SR.No. 71696

C.M.A. No.663 of 2005

ASK(05/12/2018)