

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2716 of 2015

Selvarasu

...Appellant /Petitioner

Vs.

1.Kandasamy

2.The Manager,
National Insurance Co. Ltd.,
No.63, Rasi Plaza, Prathakshanam Road,
Karur, Karur District.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 01.08.2013 made in M.C.O.P.No.104 of 2011 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr.C.Kulanthaivel

For R1 : No appearance

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the dismissal of the award dated 01.08.2013 made in M.C.O.P.No.104 of 2011 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

2.The appellant is the claimant who filed M.C.O.P.No.104 of 2011 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition, holding that the claimant has not proved the accident.

4.Challenging the dismissal of the award dated 01.08.2013 made in M.C.O.P.No.104 of 2011 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal, the appellant/claimant has come out with this appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition on the ground that FIR was lodged belatedly, there is contradictions in the version of the appellant in discharge summary and claim petition and the evidence let in by the appellant and there is no damage to the tractor which dashed against the appellant. The learned counsel for the appellant further contended that the appellant is an illiterate person and got confused by the questions and cross examination of the counsel and have stated contrary statements. The appellant has explained the discrepancies in the discharge summary and contentions in the claim petition and evidence. The appellant has explained the discrepancies in re-examination. The discrepancies are minor and they are not vital to the claim of the appellant. The delay in lodging the complaint and registration of FIR is not vital to the claim of the appellant. The Tribunal failed to consider that when a heavy vehicle like tractor dashes against a human body, there will not be any damage to the tractor and prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the tractor was not involved in the accident. The appellant has stated to the Doctor that the accident was caused by the two-wheeler. The details of time and nature of treatment alleged to have been taken by the appellant as per the materials on record creates a suspicion whether the accident occurred on 04.11.2010. The Tribunal by giving valid reasons, dismissed the claim petition and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellant in the FIR as well as in the claim petition has stated that while he and his friend were pushing the two-wheeler, the tractor with trailer belonging to the 1st respondent dashed against him and he sustained injuries. In the claim petition, the appellant has stated that he took first aid in Maruti Hospital, Namakkal and was admitted as in-patient in the Ganga Hospital, Coimbatore from 04.11.2010. Contrary to the said stand, the appellant has stated that he took treatment as in-patient in Maruti Hospital, Namakkal and subsequently, he took treatment in Ganga Hospital, Coimbatore. At the time of

admission in the Ganga Hospital, the appellant has stated that the accident was caused by two-wheeler. The Tribunal considering these facts, coupled with delay in lodging the complaint, held that the appellant has not proved that the accident occurred on 04.11.2010 was due to the tractor belonging to the 1st respondent, as alleged by him. The Tribunal has given valid and cogent reason for dismissal of the claim petition. In view of the same, there is no reason to interfere with the said finding given by the Tribunal.

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

gsa

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Namakkal,
2. The Section Officer,
E.R. Section, High Court, Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.84913
+1cc to M/s.R.Sreevidhya, Advocate, S.R.No.85783

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RV(CO)
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