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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.250 of 2018

V. PRAVEEN KUMAR ... Appellant/Petition

Vs

1.A. MOHAMMED RABIC

2. SHRIRAM GENERAL INS. CO. LTD.

PLOT NO.5 RAMACHANDRAN STREET

1ST FLOOR

SARAVANAN NAGAR SRIVARAM PERUNGUDI

CHENNAI-600096

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 08.12.2017 made in MCOP.8202 of 2013 on the file of the II Judge Motor accident Claims Tribunal (Court of Small Causes) Chennai.

For appellant : Ms.P.T.Saleem Fathima

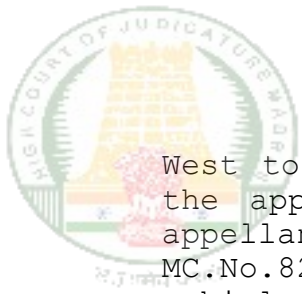
For respondents : Mr.S.Dhakshnamoorthy, for R-2
1st respondent set exparte

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The claim petition filed by the appellant for compensation on account of motor accident was dismissed by the Motor Accident Claims Tribunal, Chennai, on the ground that the appellant miserably failed to prove that the accident was on account of the negligence of the driver of the vehicle owned by the first respondent, and insured with the second respondent.

2. The appellant met with an accident on 1 November 2013 at about 17.30 hours. He was proceeding in his motor cycle from south to north direction in Korattur East Avenue Road. He was on the western side of the road. At that time, the vehicle, TATA Ace Van, bearing registration number TN 32 T 5176 came from the



West to East direction and hit against the motorcycle driven by the appellant. The appellant sustained multiple injuries. The appellant preferred a claim petition before the Tribunal in MC.No.8202/2013 claiming compensation. The owner of the goods vehicle and the insurer were shown as the parties to the claim petition.

3. Before the Tribunal, the Insurance Company took up a contention that the accident was on account of the negligent act of the appellant.

4. The Tribunal found that there was no complaint at the instance of the appellant. The trial Court was of the view that there was no evidence adduced by the appellant to show that the driver of the goods vehicle, owned by the first respondent alone was negligent. The Tribunal therefore arrived at a finding that the negligence was not proved and as such, the Insurance Company is not liable to pay the compensation.

5. The complaint relating to the accident was preferred by the driver of the TATA Ace Van, owned by the first respondent. The first information report was not produced before the trial Court. The trial Court was not in a position to ascertain the case pleaded by the complainant in the FIR preferred before the traffic police. The fact that there was no complaint at the instance of the appellant would not go to show that he alone was negligent. The appellant was more concerned with the treatment to the injury sustained by him in the accident and as such, he failed to prefer a complaint. The police in the meantime, recorded the statement of the driver of the goods vehicle and on the basis of the said statement, registered a case. These aspects were not considered by the learned trial Judge. The trial Court proceeded as if the available materials were not sufficient to arrive at a conclusion regarding negligence. Now that the FIR is before this court, we are of the considered view that reasonable opportunity should be given to the appellant to prove the negligence and the legality and correctness of the claim made in the claim petition. We therefore set aside the order dated 8 December 2017, and remand the matter to the trial Court for fresh consideration.

6. The claim petition in MCOP No.8202 of 2013 is restored to file. We direct the Motor Accident Claims Tribunal, Chennai to grant reasonable opportunity to the petitioner and the respondents to produce evidence in support of their respective contentions. The trial Court is further directed to pass an order on merits, taking into account the case pleaded by the respective parties. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.



7. In the upshot, we allow the civil miscellaneous appeal. There is no order as to costs. Consequently, C.M.P.No.16404 of 2018 is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tar

To

1. The II Judge Motor accident Claims Tribunal
(Court of Small Causes) Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Dhakshnamoorthy, Advocate Sr.No.65095
+1 cc to M/s.M.Swamikkannu, Advocate Sr.No.65059

C.M.A.No.250 of 2018

CSL/06.12.2018