

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1902 of 2014

Kittu

...Appellant

Vs

1.Eswaran

2.New India Assurance Co., Ltd.,

V.R.V. Complex,

Bhavani Main Road,

Perundurai - 638 052.

(Policy No.724804/31/07/01/0000052)

...Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the Order and Decree dated 20.09.2013 made in M.C.O.P.No.583 of 2007 on the file of the Motor Accident Claims Tribunal, Sub-Court, Sankari, Salem District.

For Appellant : Mr.A.Kumar

For Respondents : R1- Exparte
Mr.J.Chandran for R2

JUDGMENT

The instant appeal has been filed by the claimant challenging the dismissal of his claim by the order dated 20.09.2013 passed by the Motor Accident Claims Tribunal, Sub-Court, Sankari, Salem District in MCOP.No.583 of 2007.

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

2(a) According to the appellant, he sustained injuries on 11.07.2007 as a result of an accident caused by a lorry bearing Registration No.KA01 A 5389 owned by the first respondent and insured with the second respondent. The appellant preferred a

claim before the Motor Accident Claims Tribunal in MCOP.No.583 of 2007 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal, by its order dated 20.09.2013 in MCOP.No.583 of 2007 dismissed the claim of the appellant on the ground that the appellant had already preferred a claim before the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem in MCOP.No.409 of 2007 for the same accident.

3. Aggrieved by the order dated 20.09.2013 passed in MCOP.No.583 of 2007, the instant appeal has been filed by the appellant/claimant.

4. Heard Mr.A.Kumar, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the second respondent. The first respondent has remained as exparte before the Tribunal as well as this Court.

5. According to the learned counsel for the appellant, the Tribunal has rejected the claim since the appellant did not produce the order dated 30.04.2008 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem in MCOP.No.409 of 2007 dismissing the claim of the appellant as not pressed. According to the learned counsel for the appellant, the Tribunal ought not to have dismissed the claim without considering the claim on merits. According to him, the accident and the injuries sustained by the appellant as a result of the said accident was not disputed by the second respondent before the Tribunal. Considering all these factors, according to the learned counsel for the appellant, the Tribunal ought to have awarded compensation to the appellant.

6. Per contra, the learned counsel for the second respondent/insurance company would submit that the appellant has suppressed the filing of the earlier claim petition for the same accident while filing the claim petition in MCOP.No.583 of 2007 in which the impugned order dated 20.09.2013 dismissing the claim of the appellant was passed. According to him, the Tribunal has rightly rejected the claim for suppression of the earlier claim petition by the appellant and for having approached the Tribunal with unclean hands.

7. This Court has considered the materials available on record and has examined the impugned order and after considering the submissions of the respective counsels, observes the following:

(a) The second respondent has not disputed the accident which resulted in injuries sustained by the appellant in their counter statement filed before the Tribunal in MCOP.No.583 of 2007.

(b) It is an admitted fact as seen from the order dated 30.04.2008 passed in MCOP.No.409 of 2007, which is produced in the typed set of papers by the appellant that MCOP.No.409 of 2007 was dismissed as not pressed prior to the filing of the counter by the second respondent/insurance company in MCOP.No.583 of 2007.

(c) It has also been deposed by the appellant before the Tribunal that the order dated 30.04.2008 passed in MCOP.No.409 of 2007 was also communicated to the second respondent/insurance company, which has also been observed in the impugned order dated 20.09.2013 passed in MCOP.No.583 of 2007. But the Tribunal, under the impugned order has rejected the claim of the appellant only on the ground that he did not produce the copy of the order dated 30.04.2008 passed in MCOP.No.409 of 2007, where the claim of the Appellant was dismissed as not pressed.

8. This Court is of the considered view that the Tribunal ought to have disposed the claim filed in MCOP.No.583 of 2007 by the appellant on merits and ought not to have rejected the claim for non-production of the order copy dated 30.04.2008 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem in MCOP.No.409 of 2007, which was the earlier claim petition filed by the appellant and dismissed by the court as not pressed. Since the accident and the fact that the appellant has sustained injuries has not been disputed by the second respondent/insurance company before the Tribunal, the claim filed by the appellant will have to be decided on merits and in accordance with law. Therefore, this court is of the considered view that the order dated 20.09.2013 passed by the Motor Accident Claims Tribunal, Sub Court, Sankari in MCOP.No.583 of 2007 is hereby set aside and the matter is remanded back to the Tribunal which shall re-hear the claim filed in MCOP.No.583 of 2007 afresh by giving sufficient opportunities to the parties to the dispute, in accordance with law and pass final orders within a period of two months from the date of receipt of copy of this order. It is made clear that the second respondent is permitted to raise all defences including their liability to pay interest for the alleged suppression of material fact by the appellant about the filing of the earlier claim petition.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsi/rgr

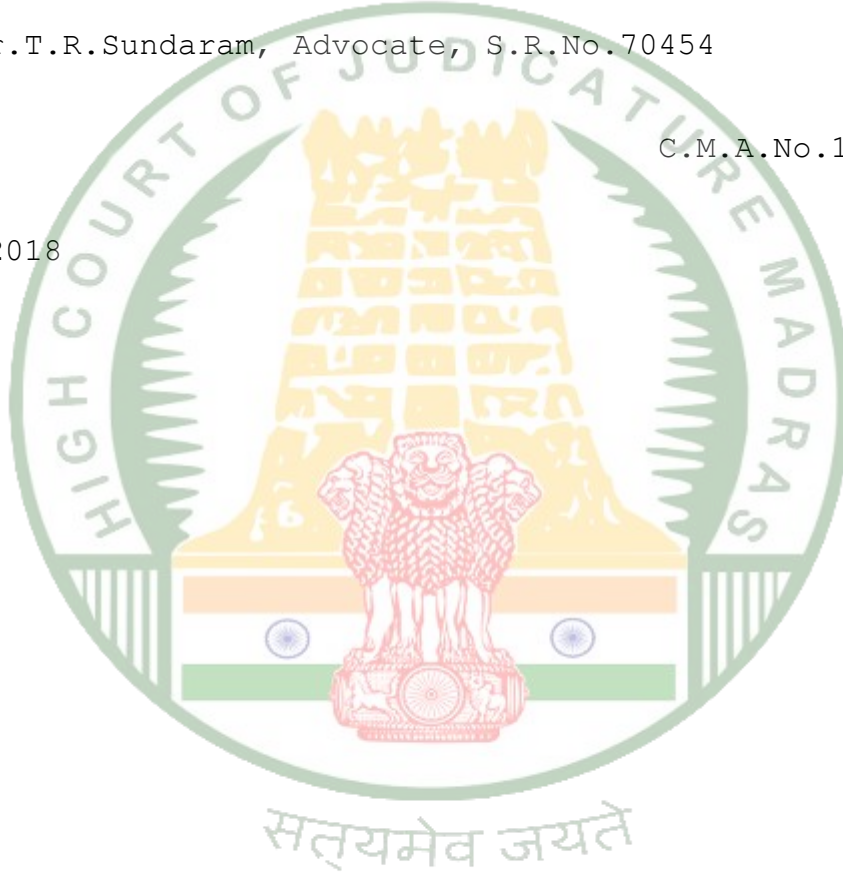
To

1. The Motor Accident Claims Tribunal,
Sub-Court, Sankari, Salem District.
2. The Record Clerk,
Vernacular Section,
High Court, Madras.
3. The Section Officer,
VR Section,
High Court, Madras-104

+1cc to Mr.T.R.Sundaram, Advocate, S.R.No.70454

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PP (Co)
CS/21/12/2018



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