



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1333 of 2004

Sankaranarayanan ... Appellant/ Petitioner

..Vs..

1. Krishnamoorthi
2. The New India Assurance Company Ltd.,
Tuticorin ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.03.2003, made in MCOP No.34 of 1998 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Villupuram.

For Appellant : Mr. T.Dhanyakumar
For Respondents : Mr. J.Chandran, for R-2.

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J U D G M E N T

In respect of the grievous injuries sustained in the right leg and occipital region, in an accident that took place on 14.08.1997 at about 18.00 hrs, the claimant / injured / appellant herein claimed a sum of Rs.1,00,000/-. The Claims Tribunal, based on the oral and documentary evidence adduced, dismissed the claim petition. As against the same, the claimant, as appellant, has preferred the above Appeal.

2. The main ground of appeal (as taken in this Appeal) is that the Tribunal erred in not taking into consideration Exs.A-1 to A-6 and the evidence of P.Ws.1 and 2 in proper perspective.

3. In order to test the merits of the grounds taken, it is necessary to consider the parameters based on which the Tribunal has dismissed the claim petition.

4. The Tribunal has framed the following issues:-

- (i) Whether the driver of the first respondent herein,



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who drove the vehicle bearing No.PY01-J-8766, is responsible for the accident?

(ii) Whether the claimant is entitled to receive the compensation as claimed by him?

(ii) To what other reliefs the claimant is entitled to?

5. While answering the said issues, the Tribunal has taken into consideration Ex.P-1-First Information Report and stated that no accident copy register or wound certificate has been produced by the claimant, in respect of the treatment taken by him at Government Hospital, Ulundurpet. Also, the Tribunal, by taking into account the Ex.P-3-Discharge slip issued by the JIPMER Hospital, has stated that the claimant has not taken correct treatment for the alleged injuries sustained by him.

6. Further the Tribunal has analysed Exs.P-2-Wound certificate and P-6-X-Ray, marked through P.W.2-Dr.Ravindran, who also issued the disability certificate. In the evidence of P.W.2, though the Doctor has certified the disability of the claimant at 40%, he has stated that such a certificate was issued by him, only after five years of the accident and he has also stated that he did not know whether the mediocre instructions given to the claimant was strictly followed by him or not and if he had been following the instructions, definitely the percentage of disability would have been less and would not be at 40%. Basing reliance on the said evidence and documents, the Tribunal disbelieved 40% disability. Also, the Tribunal has rendered a finding that leaving the owner of the vehicle, the claimant has proceeded the case only as against the Insurance Company, which is against law. Based on these findings, the Tribunal has dismissed the Claim Petition.

7. It is suffice to point out that the appellant herein has not chosen to adduce any evidence with regard to the injuries sustained by him and the proximate cause between the accident and disability. When a particular fact is within the special knowledge of the appellant, it is his duty to produce the best evidence, but that evidence has not been produced by the appellant herein.

8. A mere perusal of the award passed by the Claims Tribunal would go to show that the Tribunal has meticulously considered Exs.P-1 to P-6 and the evidence of P.Ws.1 and 2 and has dismissed the Claim Petition. Even otherwise, no new grounds, except the ones taken before the Tribunal, have been raised by the appellant herein. Hence,



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the grounds of appeal are not acceptable. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To
Motor Accident Claims Tribunal, I Additional Sub Court,
Villupuram.

Copy to :
The Section Officer, V.R.Section, High Court, Madras

+1cc to Mr.T.Dhanya kumar , Advocate SR.No. 46548

C.M.A.No.1333 of 2004

A.SK(05/11/2019)