

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2199 of 2007

R.Jaganathan

... Appellant / Claimant

Vs.

S.Dhasan (deceased)

1. The National Insurance Company Ltd.,
Divisional Office - 1,
Second Floor, Saradha College Road,
Salem 636 007

2. Tmt. Kanthayi

3. Kandasamy

4. Selvi. Poongodi,
(2 to 4 are legal heirs of
deceased S.Dhasan)

... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the Judgment and Decree, dated 29.08.2006 made in
M.C.O.P.No.353 of 2001 on the file of the Motor Accident Claims
Tribunal, First Additional District Judge, Salem.

For Appellant : Mr. K.Kuppusamy

For Respondents : Mr. K.Mohan, for R-1

JUDGMENT

On 25.01.2001 at about 03.30 pm, when R.Jaganathan /
claimant / appellant herein was travelling as a pillion rider in
a TVS 50 bearing Registration No.TN39-E-3956, which was driven
by his brother, a mini lorry bearing Registration No.TN27-S-2513
dashed against the two-wheeler, due to which the appellant
herein sustained multiple / grievous injuries all over the body.
Claiming that the first and second respondents / Insurer and
owner / insured of the mini lorry are jointly and severally
liable to pay the compensation, the appellant herein has filed a
claim petition before the Claims Tribunal claiming a
compensation of Rs.3,00,000/-.

2. The Tribunal, on a consideration of the materials and
evidence placed before it, has dismissed the Claim Petition. As
against the dismissal, the claimant, as appellant herein, has
preferred this Appeal.

3. Heard both sides.

4. The learned counsel for the claimant / appellant submitted that the Tribunal erred in holding that the rider of the motorcycle was responsible for the accident, by relying upon Ex.R-3-Motor Vehicle's Inspector Report; the Tribunal erred in holding that the appellant's claim is false, by relying upon the evidence of R.W.1.

5. On the other hand, the learned counsel for the first respondent / Insurance Company submitted that the Tribunal has meticulously considered all the documents and evidence adduced by both sides and has held that the claim of the appellant herein is false, which does not require any interference at the hands of this Court. He further submitted that though the Tribunal has arrived at the quantum of compensation at Rs.59,000/-, the same has to be payable by the rider of the two-wheeler, since the Tribunal based on witnesses and documents, has held that the rider of the two-wheeler was at fault and not the driver of the mini lorry; the Claim Petition by the claimant was dismissed by the Tribunal for non-joinder of rider of two-wheeler and the Insurance Company, in which the two-wheeler was insured; the findings of the Tribunal are perfectly valid and the same do not require any interference at the hands of this Court.

6. Before the Tribunal on the side of the claimant P.Ws.1 and 2 were examined and Exs.P-1 to P-6 were marked and on the side of the Insurance Company, R.Ws.1 and 2 were examined and Exs.R-1 to R-3 were marked. Out of the evidence examined, P.W.1 is the claimant himself and R.W.1 is the driver of the mini lorry. The Tribunal has, among other things, taken note of both evidence and ultimately held that the accident had not happened as alleged by P.W.1 but had happened only as deposed by R.W.1.

7. R.W.1 in his evidence has deposed that he was the driver of mini lorry at the time of accident; TVS 50 motorcycle was hit on the backside of the mini lorry; he had only taken the rider and pillion rider (appellant herein) of the two-wheeler to one Dr.Rathinam, for first-aid treatment and subsequently to Government Hospital, Omalur; he only lodged the complaint about the accident (Ex.R-1); he did not receive any summons from the Criminal Court with regard to the accident; after some days, he came to know that the complaint has been closed as mistake of fact and in proof of the same, Ex.R-2 was produced. The evidence of R.W.2-Motor Vehicle's Inspector also supports the case of R.W.1 and other documents produced on the side of the respondents.

8. Based on the above and having found that the appellant herein has not produced any documents contra to the documents produced by the respondents, the Tribunal has held that the rider of the two-wheeler himself was responsible for the accident and not the driver of the mini lorry.

9. Apart from the above, it is evident from the records that the driver of the mini lorry has given a complaint before Tharamangalam Police Station on 25.01.2011 and the same was registered in Crime No.47 of 2001. Further, the facts as alleged in the complaint by the driver of the mini lorry corroborate with the Inspection Report by the Motor Vehicle Inspector, dated 29.01.2001. No evidence or document was forthcoming on the side of the claimant / appellant to establish the fact that the accident had not happened as stated by the respondents herein. Also if really the appellant herein was not at fault, the appellant would have lodged the complaint at the first instance or at least a counter complaint. Hence, this Court is of the considered view that the accident had happened only in the manner as stated by the first respondent / Insurance Company and not as alleged by the appellant / claimant.

10. In view of the above, affirming the dismissal of the award passed by the Claims Tribunal, this Civil Miscellaneous Appeal filed by the claimant / appellant herein stands dismissed. No costs.

Sd/-
Assistant Registrar(Arbitration)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
First Additional District Judge, Salem.

Copy to : The Section Officer, V.R.Section,
Madras High Court, Chennai 104

AKM/13.02.2020/3P-3C /

C.M.A.No.2199 of 2007