

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2598 of 2006

Minor Jayasuriya .. Appellant/Petitioner
(Rep by guardian and
father Jayashankar)

Vs.

1.Sampath Kumar

2.The Bajaj Allianz General
Insurance Company,
25/28, Prince Towers,
5th Floor, College Road,
Nungambakkam,
Chennai - 6.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2005 made in M.C.O.P.No.50 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.3, Vriddhachalam.

For Appellant : Mr.G.Anabaya Chozhan
For R1 : M/s.AL.Ganthi Mathi
For R2 : No Appearance

सत्यमेव जयते
J U D G M E N T

The case in brief, is as follows:

On 14.04.2004, at about 7.30 pm., the appellant / claimant was proceeding in the left side mud portion of the Vriddhachalam to Chidambaram Main Road, by walk. When he reached near Veeranar Koil at Su.Keeranur, the Hero Honda two-wheeler bearing Reg.No.TN-31-L-3128, belonging to the first respondent and insured with the second respondent Insurance Company, came in a rash and negligent manner and dashed against the appellant. Due to the impact, the appellant sustained fractures and multiple injuries all over the body. Claiming that the accident had happened due to rash and negligent riding on the part of the

rider of the two-wheeler, the appellant filed a claim petition claiming a sum of Rs.2,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal rejected the claim petition on the ground that the appellant has not proved the factum of accident. Hence this appeal.

2.The learned counsel for the appellant / claimant has submitted that the Tribunal has erred in placing reliance upon the evidence of R.W.1 without any pleadings; the Tribunal has grossly erred in rejecting the claim of the claimant on the ground that the vehicle was registered only on the next day of the accident ie. 15.04.2004. He further submitted that the Tribunal ought to have considered that the respondent witness has neither denied the accident nor given valid reasons to disprove the evidence and documents adduced on the side of the claimant.

3.Per Contra, the learned counsel for the 1st respondent / owner of the vehicle has submitted that the Tribunal has considered each and every aspect and has rendered findings on negligence and dismissed the claim petition; such a finding cannot be disturbed by this Court, since the same was based on evidence and materials available on record.

4.This Court has considered the said submissions and perused the materials available on record.

5.A perusal of the award passed by the Tribunal would go to show that the Tribunal has taken note of the evidence of P.Ws.1,2,3 and R.W.1. The Tribunal, while dealing with the mode of accident, has taken note of the contents of the F.I.R/Ex.P1 and the delay in lodging the same. It is seen from the records that F.I.R was lodged after a period of 35 days from the date of accident. There is no explanation whatsoever from the claimant's side as to why there was such a long delay in filing the F.I.R.

6.As per Ex.P2 / Motor Vehicle Inspector's Report, it was clearly established that only on 20.05.2004, the Inspector had inspected the vehicle, whereas the accident had taken place on 14.04.2004, ie., there was a delay of 36 days in carrying out inspection. The Tribunal has also considered Exs.P1,2,4 and 6 and the evidence of P.Ws.1 and 2 and held that there is no cogency or relevancy between the documents and evidence adduced, but whereas the evidence of R.W.1 corroborates with the said exhibits marked.

7.The Tribunal has also taken note of the fact that the criminal case filed and the case on hand have no relevancy and has come to the conclusion that the alleged fractures suffered by the claimant was not because of the accident said to have

taken place on 14.04.2004. Hence, the Tribunal based on Exs.P1,2,4 and 6 and the evidence of P.Ws.1 and 2 and R.W.1, came to the conclusion that the accident itself is a bogus one.

8.This Court finds absolutely no reason to interfere with such a finding on negligence rendered by the Tribunal. Further, this Court is of the opinion that the claimant has not proved the factum of accident by way of proper evidence and documents before the Tribunal. Viewed from any angle, this Court could not arrive at any other conclusion other than the one arrived at by the Tribunal.

9.But, the Tribunal has directed the District Collector, Cuddalore, to pay a sum of Rs.50,000/- to the claimant/appellant herein from his relief fund, which is hereby confirmed.

10.In the result, while dismissing the Civil Miscellaneous Appeal, the District Collector, Cuddalore is directed to deposit the sum of Rs.50,000/- as ordered by the Tribunal, to the credit of MCOP No.50 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.3, Vridhachalam, within a period of four weeks from the date of receipt of copy of this judgment, if not already paid. On such deposit being made, since the appellant would have attained majority by now, he is permitted to withdraw the same on making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

gbi/srk
To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.3,
Vridhachalam.

2.The District Collector, Cuddalore.

3.The Section Officer,
V.R. Section, High Court,
Madras.

+lcc to Mr.M/s.AL.Ganthi Mathi, Advocate SR.No.60953

C.M.A.No.2598 of 2006

CP(CO)
GMY(18/08/2020)