

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE Mrs.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.4 of 2009

A.Madheswaran

.. Appellant/Claimant

Vs.

1. V.Devaraj

2. The United India Insurance Co.Ltd.,
No.3, Rengasamy Street, Karapakkam,
Chennai - 600 096. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.10.2006 made in M.C.O.P.No.1339 of 2003 on the file of Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.Ramya V Rao

For R2 : Mr.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award, dated 17.10.2006 made in M.C.O.P.No.1339 of 2003 on the file of Motor Accident Claims Tribunal/ II Judge, Court of Small Causes, Chennai.

2. Since the Court below rejected the claim petition, the appellant has raised the following grounds in this appeal to award compensation for the injuries sustained due to the accident that took place on 25.05.2002:

The learned counsel for the appellant would submit that the Tribunal ought to have appreciated the evidence of PW1 and PW3 from the proper perspective while analyzing the question of negligence. Ex.P4 clearly describes the place of accident and in the absence of any contra evidence from the respondents, the decision of the Tribunal on the question of negligence against the claimant is clearly unsustainable. The accident was proved

by the claimant and the rider of the Motorcycle is found in the FIR which would prove that he was hit by the said motorcycle. The person sustained was aged about 48 years at the time of the accident and had sustained Grade I compound fracture of left Tibial Plate, head injury besides other multiple injuries all over the body and that the claimant being a mason by profession had become disabled and consequently he is unable to do any work as before nor could he do any other work for his living. The claimant had claimed Rs.80,000/- being the income loss from 23.06.2002 to 26.03.2003, Rs.10,000/- towards Transportation, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards medical expenses. Hence, the Tribunal ought to have awarded a sum of Rs.4 lakhs as compensation.

3. The case of the appellant is that on 23.05.2002 at about 01.00 am, midnight, while the claimant was walking in Old Mahabalipuram Road, near Shollinganallur Milk Depot, a Motorcycle bearing registration No.TN-20 Z-1382 which was driven by its driver in a rash and negligent manner endangering public safety came from Navalur to Chennai and hit against the claimant. Due to the impact, the claimant sustained grievous injuries and was admitted in Government Royapettah Hospital, Chennai 14 and taken treatment from 24.05.2002 to 19.06.2002 and also continuing his treatment as out patient. The rash and negligent driving of the driver of the motorcycle leads to the accident. Hence, the injured prayed to award compensation from the said owner as well as the Insurance Company/2nd respondent herein.

4. A counter was filed by the 2nd respondent who had submitted that the accident as alleged by the petitioner in paragraph 23 of the claim petition is denied as false and the petitioner was walking on the road without following the traffic rules and he suddenly cut across the road, due to which act, the accident had occurred. Hence, the petitioner is not entitled for any compensation and the respondent is not liable to pay any sum towards compensation. He also submitted that there is contributory negligence on the part of the petitioner in causing the accident. He further submitted that the quantum of compensation claimed under various heads in paragraph 21 of the claim petition are excessive, abnormal and fanciful to which the petitioner is not entitled. The nature of injuries are exaggerated for the purpose of making huge claim. The petitioner is called upon to prove the same with legally permissible documentary evidences. It is also submitted that they have filed the additional counter statement at a later stage.

5. On behalf of the claimant / appellant various documents have been marked as Exs.P1 to P11 and three persons were

examined as witnesses. On the side of the respondents, neither any witness nor any document were marked.

6. The Court below after considering the available materials, had found that the claim made by the appellant / claimant was false and there was no proper evidence to show that the said vehicle was involved in the said accident and has rejected the claim of the appellant /claimant.

7. The learned counsel for the appellant submitted that the Court below erroneously dismissed the petition when they have produced proper documents such as FIR, wound certificate, disability certificate and policy copies to show that the vehicle involved in the said accident and the appellant has sustained injuries as stated in the medical report. When the respondents themselves have admitted that the accident has occurred since the appellant/claimant was walking on the road without following the traffic rules and due to which the accident occurred and there is contributory negligence on the part of the petitioner in causing the accident, the Court below without application of mind, has dismissed the claim petition.

8. The counsel for the respondents submitted that even though they have filed a counter, the Court below found that the claimant has not filed any document to prove their case. The person who has claimed compensation has to prove the same, not the Insurance Company. The claimant has to examine the said owner of the vehicle or they should examine any other proper witness to prove their case. It is also pertinent to note that the FIR has been registered only after 4 days of the accident and no reason has been stated for the long delay.

9. After hearing the parties, on perusal of records, it is seen that in the FIR , the registration number of the vehicle which involved in the accident has not been recorded. It is stated that an unknown vehicle driver has involved in the accident. Even before this Court, the appellant was not able to prove his case as to which vehicle caused the accident and who was the driver and the owner of the vehicle, when the driver of the said vehicle had taken him in an auto and admitted him in the hospital. If any criminal complaint has been registered, the C.C. No has to be produced before this Court. But there is no substantial evidence produced to prove his case.

10. Considering the facts stated above, this Court is of the opinion that the Court below has rightly rejected the claim petition observing that if the Police has registered an FIR, filing of a the charge sheet and the said criminal case would have been proceeded with after conducting proper investigation.

But there is no such investigation report filed before this Court to show the cause and the manner of such accident. The appellant and P.W.3 in their chief examination has stated that the owner of the vehicle had given him the registration number, but if the same was true, the claimant would have produced the number to the Police and no such recording in any of the records by the Police Officials concerned to show the said vehicle has been involved in the accident. When no such material has been produced before the Court below to substantiate his contention, the Court below has rightly considered the issue.

11. One more aspect is that, the Court below has found that during the admission in the hospital, it has been informed by the claimant that the injury has been caused by falling down from the tree. In the discharge summary also, it is stated that the claimant sustained injuries due to fall from tree. Hence, it is believed that the claimant has created a story of being hit by a vehicle on the same night around 1 am, where there will be not many eye witnesses on the Road. It is also not made clear that only an aged person had to walk on the Road at mid night, that too alone who is hailing from Kandarampettai village, Thiruvannamalai District. The alleged accident is an after thought by the claimants when it is otherwise proved that he had fallen from a tree. Therefore, it is very clear that the claimant has fallen from a tree and it is surprising that the parties filed a petition to claim compensation from the insurance company had created a story of accident in the mid night which has to be dismissed intoto.

12. In view of the above facts, this Court is of the view that this Civil Miscellaneous Appeal has to be dismissed by confirming the decree and judgement of the Motor Accident Claims Tribunal and the appellant / claimant is not entitled for any compensation. No costs.

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Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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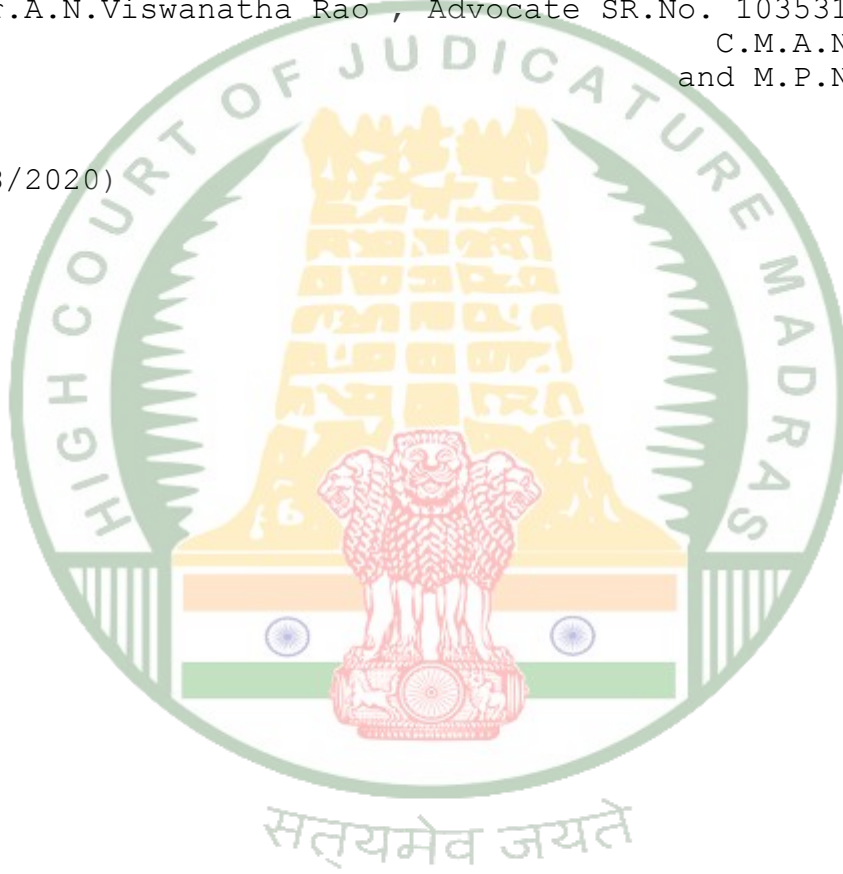
1. The II Judge,
Court of Small Causes/
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.A.N.Viswanatha Rao , Advocate SR.No. 103531

C.M.A.No.4 of 2009
and M.P.No.1 of 2014

vba co
A.SK(27/08/2020)



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