

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 03.04.2019	Date of Pronouncing Judgment 09.08.2019
--	--

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.3718 of 2010

A.Ismail

...Appellant

Vs.

1.K.Assan

2.A.K.Yesmail

3.The New India Assurance Company Ltd.,
1st Floor, State Bank of Mysore Building,
No.44 - 47, Oppanakara Street,
Coimbatore 641 001.

4.Chandrasekar

5.Ponnusamy

6.United India Insurance Company Ltd.,
No.2, Dr.Sankaran Road,
Namakkal.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.4 of 2007 on the file of the Motor Accident Claim Tribunal and Chief Judicial Magistrate, Coimbatore dated 19.01.2009 and to set aside the same.

For Appellant : Mr.S.Gunalan
For Respondent 6 : Mr.S.Arun Kumar
For Respondent 3 : Mr.M.Krishnamoorthy
For Respondents 1, 2, 4, 5: Notice Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Judgment and Decree passed in M.C.O.P.No.4 of 2007 on the file of the Motor Accident Claim Tribunal and Chief Judicial Magistrate, Coimbatore dated 19.01.2009 and to set aside the same.

2.The claimant is the appellant herein, challenging the order of dismissal passed in M.C.O.P.No.4 of 2007 has preferred this Civil Miscellaneous Appeal. The claim petitioner / appellant filed the claim petition in M.C.O.P.No.4 of 2007 alleging that on 21.10.1996 at about 01-45 A.M (mid - night hours) the tempo van bearing Registration No. TN 39 C 4194 was proceeding from West to East direction of Erode to Perundurai Road, Karukkanpalayam, near Kallangattu Thottam with the Petitioner Ismail traveling in it. At that time, there came a Lorry bearing Registration No. TN 28 C 6786 on the road from the opposite direction. Due to the composite negligence on the part of the drivers of both the vehicles, the Van and Lorry colluded with each other and sustained damages. The persons in the Van including the petitioner sustained bodily injuries.

3.The respondents 1 and 2 are the driver of the vehicle and owner of the Van have remained exparte and the third respondent Insurance Company of the Van in which the claim petitioner had travelled had filed a counter statement alleging that the petitioner has already filed an claim petition - M.C.O.P.No.826 of 1997, before the Principal Subordinate Judge of Coimbatore and that the above case was transferred to the file of the Fast Track Court No.I, Coimbatore, as M.C.O.P.No.764 of 1997 and the petition was dismissed for default on 04.10.2002. The restoration application was filed on 08.04.2003 in I.A.No.342 of 2003. Again on 07.07.2003 the said I.A.No.343 of 2003 was also dismissed and it is further stated that the petitioner who examined himself in M.C.O.P.No.764 of 1997 must produce his deposition. His case in evidence is different. The 4th and 5th respondents namely the driver and owner of the Lorry remained exparte and the Insurance Company United India of the Lorry has filed a counter statement alleging that the petitioner originally filed a similar claim petition before the Tribunal at Coimbatore in M.C.O.P.No.764 of 1997 and it was made over to the file on Fast Track Court No.1 of Coimbatore and it was dismissed for default on 04.10.2002 and further restoration application was also filed on 08.04.2003 in I.A.No.342 of 2003 which was also dismissed on 07.07.2003 and instead of filing petitions to restore the original petition in M.C.O.P.No.764 of 1997 by involving multifarious processes and multiplicity of proceedings envisaging more time and effort, the petitioner has opted to file an application afresh, and this application is filed and on date, no claim petition is pending before any of the Tribunals and this Court entertain the claim petition on file, by considering the bonafide reasons for the delay, by giving effect to the amended Act 54 of 1994 dated 14.11.1994 as false and incorrect. Further the petitioner has not explained in his

petition how this respondent is liable for the compensation which he claimed. The FIR is against the driver of the Van in which he has traveled and this respondent is no way connected and he is not at all liable to pay any compensation to the petitioner.

4. Before the Tribunal, claimant / appellant injured was examined as P.W.1 and Ex.P1 to Ex.P10 were marked and on behalf of the respondent no oral or documentary evidence are reduced. The admitted factual position that the injured had travelled in the Van bearing Registration No. TN 39 C 4192, which is a goods carrier vehicle, which is involved in the accident with the Lorry bearing Registration No. TN 28 C 6786. The date of the accident being 23.10.1996.

5. The very same petitioner as initially filed the claim petition in M.C.O.P.No.826 of 1997 before the Principal Sub Court, Coimbatore. Subsequently, transferred to Coimbatore Fast Track Court and re-numbered as M.C.O.P.No.764 of 1997 and in the absence of the petitioner after chief examination of M.C.O.P.No.764 of 1997 was dismissed for default. Subsequently, the I.A.No.342 of 2003 appears to have been filed under Order 9 Rule 9 CPC and the same was also dismissed. In other words for the accident taken place on 21.10.1996 the M.C.O.P.No.826 of 1997 after transferred to Fast Track Court and re-numbered as M.C.O.P.No.764 of 1997 was dismissed for default on 08.04.2003 and the subsequent I.A.No.342 of 2003 under Order 9 Rule 9 CPC was also dismissed for non appearance of the petitioner on 07.07.2003. Thereafter, the present M.C.O.P.No.4 of 2007 seems to have been preferred.

6. The Tribunal has held that since the earlier M.C.O.P was dismissed after examination of P.W.1 for default and petition to restore the I.A was also dismissed for default and present M.C.O.P being filed after 10 years of the accident has held that the suit is barred by resjudicata and dismissed the M.C.O.P and hence this Civil Miscellaneous Appeal.

7. The learned counsel for the appellant would contend that the Motor Vehicles Act is a Special Act and a welfare legislation to help the victims. Moreover the earlier claim petition was decided on merits. Hence Resjudicata would not apply to this case. Hence the 2nd claim petition filed by the appellant is maintainable and his right to claim compensation cannot be defeated. The accident had taken place on 21.10.1996, in which accident the appellant had lost his 12 teeth and his both legs were fractured.

8.The learned counsel for the respondent would submit that since it is Order 9 Rule 9 petition was dismissed, the same operates as resjudicata. This Court has given his anxious consideration for the rival contention of both the parties. It is to be stated that on factual position it appears that the earlier round of M.C.O.P was dismissed for default after the Chief examination of the P.W.1 has pointed out by the learned counsel for the third respondent. Normally when an M.C.O.P has been filed for claiming compensation on an mere technicalities of procedure or for rules of procedure cannot be stand to defeat the justice. Even where the case of the M.C.O.P which was dismissed as withdrawn without liberty. This Court has given lenience in favour of the claimant to prosecute the subsequent cases. However, on factual position that inspite of several adjournment given for production of the petition copy of the earlier M.C.O.P and proof affidavit filed in the earlier M.C.O.P the same was not produced by the claimant / appellant also assumes significance.

9.The learned counsel for the third respondent / Insurance Company drawn my attention to the specific plea taken in the counter statement filed before the Tribunal that the manner of the accident has described in the different way , in the earlier petition and the injured travelled as an unauthorized passenger in Van belongs to the second respondent. After filing the P.W.1 proof affidavit it appears that the earlier M.C.O.P was by the petitioner. The petitioner has allowed the case to be dismissed for default.

10.Furthermore my attention was drawn to the plea in the present M.C.O.P that the stand of the claim petitioner / appellant being that of composite negligence. As stated supra that opportunity was given produce the copy of the petition filed in earlier M.C.O.P and proof affidavit copy in the earlier M.C.O.P the same was not produced for the reasons based known. In view of the above factual position and also taking note of the fact that in the earlier proceedings the claim petitioner was examined as P.W.1, thereafter the petition was dismissed for default. I don't see any merit in this Civil Miscellaneous Appeal. Accordingly the reason assigned by the Tribunal is hereby confirmed.

11.In the result,

(i) The Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 19.01.2009 passed by the learned Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Coimbatore in M.C.O.P.No.4 of 2007, is confirmed.

(ii) There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

rna
To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Coimbatore.

+1 cc to M/s.S.Gunalan Advocate sr68432
+1 cc to M/s.S.Arunkumar Advocate sr68624
+1 cc to M/s.M.Krishnamoorthy Advocate sr68518

C.M.A.No.3718 of 2010

vsnII(co)
aa23/11/2020



WEB COPY