

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON

28.01.2019

DELIVERED ON

12.04.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2068 of 2013

Vadivel @ Manikandan ...Appellant/Petitioner

Vs.

1. N.G. Manoharan
2. K. Saravanan
3. United India Insurance Company Ltd.,
Mettur Dam, Salem District.

...Respondents/Respondents

(Respondents 1 & 2 are already set exparte
before the tribunal)

PRAYER: Civil Miscellaneous Appeal filed against the Judgment
and decree dated 24.06.2005 passed in MCOP. No. 189 of 2003 on
the file of the Motor Accidents Claims Tribunal/ I Additional
Sub Court, Gobichettipalyam.

For Appellant : Mr.MA.P. Thangavel
For Respondents : Mr.T. Ravichandran - For R3
R1 & R2 Exparte

JUDGMENT

This Civil Miscellaneous has been preferred against the
Judgment and decree dated 24.06.2005 passed in MCOP. No. 189 of
2003 on the file of the Motor Accidents Claims Tribunal/ I
Additional Sub Court, Gobichettipalyam.

Brief facts leading to the claim application are as follows;

2. On 23.12.2002 the petitioner was travelling to his native
place from Mettupalayam to Annur main road in a Mini Auto after
unloading the things. At about 1.pm when the said auto was
going from west to east direction in a slow manner on the
extreme left side of the road, at that time, the 1st respondent/

driver of the lorry bearing registration no. TN 28-F-9172 came in the opposite direction with high speed in a rash and negligent manner without observing the traffic rules and dashed against the Mini Auto, in which the petitioner was travelled. As a result, the petitioner was thrown away from the Auto, his left hand was fractured, two tooth are broken and sustained simple injuries all over the body. The Mini Auto got fully damaged. After the accident the petitioner was immediately admitted in C.M.C. Hospital, Coimbatore and also taken for subsequent treatment in Richmen Hospital, Coimabtoe, so incurred huge amount for medial expenses. Hence, he claimed sum of Rs.5,00,00/- as compensation.

3. The 3rd respondent/Insurance Company in the counter has denied the manner of the accident and further stated that the petitioner has not added the driver of the mini auto as a party. The petitioner is bad for non-joinder of parties. The other aspects regarding age, occupation and income of the petitioner was also denied as excessive and hence sought for dismissal of the claim petition.

4. The tribunal after analysing the evidence and documents, has given findings that the petitioner has not filed claim petition before the concerned jurisdictional Court and also observed that the accident itself is doubtful and dismissed the claim petition.

5. Aggrieved by the said order, the claimant has preferred this appeal to set aside the order of the tribunal and for compensation.

6. In the grounds of appeal, the appellant has stated that when there was no specific pleading in the counter statement filed by the 3rd respondent with regard to the jurisdiction, the dismissal of the claim petition by the tribunal on the ground of jurisdiction is wrong. The tribunal ought to have decided the same. The other grievance raised in the appeal is that the claimant being a coolie, he has to work wherever he is deputed, so the strict adherence of residence proof for load man is amounts to denial of compensation. The tribunal ought to have return the entire case bundle to represent the same with appropriate jurisdiction court instead of dismissing entire claim petition. Hence, this appeal has been field to set aside the order of the tribunal.

7. Heard both sides and perused the documents available on record.

8. It is argued by the appellant that the petitioner is a coolie and the accident occurred while returning to his native place in a Mini Auto. The accident occurred due to the rash and negligence driving on the part of the driver of the lorry and he sustained severe injuries including fracture in his hand and in the ribs.

9. It is further argued by the appellant that immediately after the accident he was given treatment in CMC, Coimbatore and Richmen Hospital and Rex Hospital, for which relevant documents were placed before the tribunal by the appellants. Ex.P1 -FIR , Ex.P2 -Motor Vehicle Inspection Report, Ex.P3 Wound Certificate, Ex.P5 Discharge Summary and Ex.P7- Medical Bills were filed substantiate the claim.

10. The claim of the appellant is that the accident had occurred in Annur- Mettupalayam Road and his residence is at Alathur Kombai Village. Therefore, the main ground raised in the appeal is that the tribunal without going into the merit of the claim, had discussed about the jurisdictional point for entertaining the claim application. Since the claimant is a load man, he can be employed by any person and to any place, therefore the dismissal of the claim application by the tribunal on the point of jurisdiction is denial of justice.

11. It is further argued by the claimant that the tribunal had dismissed the claim application by raising doubt on the occurrence of the accident itself. Though it is the argument of the appellant that immediately after the accident, the petitioner was given treatment in a Government Hospital and also in other two private hospitals, but the documents filed in support of the treatment are found not relevant to the said accident.

12. On the other hand the respondent has contended that a criminal case has been registered in Coimbatore District Annur Police Station in Crime No. 547 of 2002 and the said fact was also admitted by the claimant before the tribunal. Hence it is stated that the claimant cannot prefer the claim application in the present tribunal when the accident had occurred in Coimbatore District. The other aspect argued by the respondent is that the claimant has not filed any documents to prove his residential address. Hence the finding of the tribunal that the claimant has not preferred his claim application in the jurisdiction Court where the claimant resides or where the accident occurred. As per the Motor Vehicle Act, the claim application has to be filed either in the place where the claimant resides or in the place where the accident occurred. But the claimant has not produced any proof to substantiate to

prefer the claim application before the Motor Accidents Claims Tribunal at Gobichettipalayam, which does not come under the jurisdiction either the place of accident or the place of residence of the claimant.

13. In support of his arguments with regard to the jurisdiction of the tribunal, the learned counsel for the appellant has produced a case law of this Court reported in 2018 (2) TNMAC 108 in the case of Dhanalakshmi and Others Vs. Sivanandham and Others. The relevant portion of the judgement is extracted below;

"7.2. When the mother of the deceased approached the Apex Court, the Apex Court held that in absence of prejudice, no objection of lack of territorial jurisdiction be entertained. The Apex Court stated that, the view taken by High court is contradictory to the Apex Court ruling in Mantoo Sarkar's case wherein it held that with regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. In that case, it was further held that distinction was required to be drawn between a jurisdiction with regard to subject-matter on the one hand and that of territorial and pecuniary jurisdictions on the other. A judgment may be nullity in the former category, but not in the later. The Bench further stated that the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. The Apex Court further held that there is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party, in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. The Apex Court also cautioned against adopting hyper technical approach in interpreting a benevolent provision for the victims of accidents of negligent driving and said that the provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated, the Bench said.

7.3. This exactly is the defence taken by the Insurance Company in this case. Thus, it is clear that the Claims Tribunal at Namakkal ought not to

have dismissed the Claim Petition even though a specific defence has been taken by the Insurance Company with regard to the lack of territorial jurisdiction, but in the absence of the Insurance Company showing any prejudice, the dismissal is unwarranted."

14. It is the evidence of the claimant that immediately after the accident he was admitted in the Coimbatore General Hospital and subsequently in two other private hospitals. On perusal of the documents, it is seen that no accident register was filed by the claimant to prove the admission and treatment given in the said hospital. But it is very much argued by the appellant that he was admitted in the mid night and on the next day only he was sent to private hospital and in the discharge summary, there is no mention with regard to the admission in Coimbatore General Hospital. If really the claimant was admitted in the Government Hospital, definitely the hospital authorities would inform the same to the concerned jurisdictional police station and a case would have been registered.

15. It is also seen that only the FIR was filed along with the claim application and the other documents viz., charge sheet, observation mahazar and other relevant documents were not filed before the tribunal. Since the claimant has not filed any documents in respect of the treatment given to him in the Coimbatore General Hospital and for registration of the criminal case, it creates more suspicion about the occurrence. Even during the enquiry, the claimant has not filed the wound certificate before the tribunal. The documents relating to the treatment taken in the private hospital alone filed before the tribunal.

16. Exhibit P1 is the FIR registered on the complaint preferred by the father of the claimant, in which, it has been stated that the said claimant along with his friends were went to Bathrakaliamman kovil and on their return, while crossing Annur - Mettupalayam road, they met with an accident. Whereas in the claim application, the petitioner has stated that "he loaded the things on request of the driver of the auto and after unloading the same the petitioner travelled in the same Auto to his native place and the accident occurred while the auto was running from Mettupalayam to Annur main road." Hence the facts as stated by the claimant in the claim application and the facts stated by the complainant, who is none other the father of the claimant are contradictory.

17. On perusal of the records, it is seen that before the trial court, original FIR was sought to be produced by the concerned police and in this regard, a reference was also made in the court proceedings (Docket Order). Hence the claimant has to prove that where he went for the purpose to unload the things and where the accident occurred or he went to Bathrakaliamman kovil along with friends in the goods vehicle.

18. Ex.A7 is the medical bills and the said bills were issued by the Richmen Hospital, in which it has been mentioned the date of admission as 23.12.2002 and the date of discharge on 30.12.2002. Ex.A5 is the Discharge summary obtained from the Rex Hospital, in which the date of admission was mentioned as 08.11.2004 and the date of discharge as 10.11.2004 i.e after two years of the said accident, therefore this document cannot be considered as relevant to this case.

19. It is the contention raised by the appellant that since he was admitted in the Coimbatore General Hospital, immediately after the accident he could not obtain the accident register, but there is reference in the Ex.A5 that the date of accident as 11.02.2002. In Ex.A2 - Motor Vehicle Inspector's Report, it is seen that the name and address of the injured person has been stated as Govindaraj (driver of the vehicle), Arunraj and Muthu Manikandan. In Ex.A4- Discharge summary issued by Richmen Hospital also filed before the tribunal and there is no mention about the treatment taken for one day in the Coimbatore General Hospital as per his evidence in his cross examination. It is mentioned in the discharge summary that the treatment was given in the said hospital and the date of discharge was on 30.12.2002 and at the time of discharge he was advised for physiotherapy exercises for hand elevation.

20. But in the Ex.A5-Discharge summary of the Rex Hospital, it has been stated that the claimant was admitted in the hospital on 08.11.2004 for the injuries sustained by him in his left and and surgery was done to him and he was discharged on 10.11.2004 from the hospital. But the accident for which the claim has been made was occurred on 23.12.2002. In view of the above contradictions, it can be clearly presume that the claimant had produced fake documents for claiming compensation. These aspects were not clearly proved by the claimant before the tribunal. When it is the fact that the entire Mini Auto got damaged and the claimant also sustained severe injuries and he was under treatment from the year 2002 to 2004 as stated by the claimant, definitely, he would have obtained the documents relating to the accident and the injuries.

21. In view of the contradictory statements of the complainant and the claimant and also the documents filed by the claimant which are related to the year 2004 for injuries sustained by him due fallen and not due to the accident that had occurred year 2002 and failed to prove the reason for taking treatment for two years for the injuries sustained by him by way of evidence or documents, this Court is of the view that the claimant has failed to prove that the injuries sustained by him are only due to the accident that occurred in the year 2002 as stated by him.

22. Though the learned counsel for the appellant has submitted various judgments including the above judgment to substantiate his claim in respect of territorial jurisdiction, they are not very much support to his case as the claimant had failed to prove the accident itself by way of relevant documents and evidence. Therefore, his claim for compensation cannot be considered by this Court.

23. The tribunal has also observed all these aspects and the discrepancies found in the evidence and also in the documents and dismissed the claim application by stating that the claimant has failed to prove the accident. This Court also find no reason to interfere with the findings given by the tribunal.

In the result, the award passed by the tribunal in MCOP. No. 189 of 2003 dated 24.06.2005 is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal
I Additional Sub Court,
Gobichettipalyam.

+1 CC to Mr.MA.P.Thangavel, Advocate sr 36668.
+1 CC to Mr.T.Ravichandran, Advocate sr 36852.

C.M.A.No. 2068 of 2013

SPD(CO)
SP(25/07/2019)