

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE.S.RAMATHILAGAM

C.M.A.No.46 of 2015

Murugesan

... Petitioner

vs.

1.B.Saravanan

2.The National Insurance Co., Ltd.,
No.88-F, Bye-Pass Road,
Dharmapuri.

.... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, seeking to set aside the judgment and decree dated 12.04.2011 made in M.C.O.P.No.1928 of 2003 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Krishnagiri.

Petitioner : Mr.K.Gandhikumar

Respondents : Ms.K.Saraswathi for
Mr.C.R.Krishnamoorthy for R2
R1- Ex-parte before Tribunal

ORDER

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 12.04.2011, made in MCOP.No.1928 of 2003, on the file of the Principal District Judge, Krishnagiri, (Motor Accidents Claims Tribunal).

2. The appellant is the claimant who filed claim petition in M.C.O.P.No.1928 of 2003, on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Krishnagiri, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in an accident that took place on 25.03.2002.

3. The Tribunal considering the pleadings, oral and documentary evidence dismissed the claim petition, hence the appeal.

4. On 25.03.2002 at about 20.30 hrs when the petitioner was proceeding to his house in a bicycle at the extreme left side of the mud portion on Dharmapuri to Pidamaneri road, at that time a Hero Honda bearing Registration No. TN 29 E 5841 came from Railway station road in a rash and negligent manner and lost his control and dashed the bicycle of the petitioner. As a result the petitioner was thrown away on the road and sustained multiple grievous injuries all over the body and his bicycle got completely damaged. Immediately the petitioner was admitted in Government Hospital, Dharmapuri and later he took treatment in various private hospitals. Due to the accident the petitioner is not able to do his normal and regular work as before and he is permanently disabled. Dharmapuri Police have registered a case in Cr.No.1120 of 2002 u/s 279, 338 of IPC against the rider of the motorcycle.

5. The learned counsel for the second respondent/Insurance Company in its counter statement has stated that the petitioner sustained injuries not due to the accident but due to some other cause and there is also delay of five months in preparing the FIR. Other aspects relating to occupation is false and the rider of the said vehicle was also not having any valid license hence the Insurance Company denied the liability as well as the accident itself. The Tribunal after analysing the evidence came to the conclusion that except Ex.A2 Wound Certificate, the petitioner has not furnished any document, since his claim is that the accident occurred on 25.03.2002 and the Tribunal also found some discrepancy with regard to the date of accident and the question of rash and negligence was also doubted by the Tribunal. Hence the said Ex.A5 Disability certificate issued by the Doctor was also not considered by the Tribunal and the claim application was dismissed.

6. The learned counsel for the petitioner submitted that there was a clear deposition by PW1 that the accident took place on 25.03.2002, the other grievance raised by the appellant is that the Tribunal has not considered Ex.A1 to Ex.A5 with regard to the injuries sustained by the claimant. It is further contended that the Tribunal failed to consider that the respondents have not examined any witness and not produced any document. It is further contended that when Ex.A2 proves that the accident took place on 12.03.2002 instead of 25.03.2002 the trial Court failed to see the Wound Certificate wherein at the top it has been mentioned that "4006 dated 25.03.2002" and in Ex.A2 also it is mentioned that the victim was admitted on 25.03.2002 at 8:15 p.m. hence the learned counsel submitted that the accident took place only on 25.03.2002 and the appellant also sustained injuries. The award passed by the Tribunal has to be set aside, since the evidence and documents preferred by the claimant was not properly reconsidered by the Tribunal.

7. Heard the learned counsel for the appellant as well as the second respondent and perused all the materials available on record.

8. The learned counsel for the 2nd respondent/Insurance Company contended that there is discrepancy in the date of accident, treatment and even in the issue of Wound Certificate the date was also not mentioned correctly and stated that whether there was a proof for accident that the petitioner sustained injury only by way of road accident or hit by any other vehicle. On perusal of the Wound Certificate it is observed that the claimant was first seen by the Doctor only on 25.03.2002. As per Ex.A1 FIR the accident was happened on 25.03.2002, but in Ex.A2 it has been mentioned that the road accident was happened on 12.03.2002 and the claimant appeared before the Doctor on 25.03.2002. The Doctor has issued Ex.A2 on 12.12.2002. As per Ex.A1, the accident happened only on 25.03.2002. If really the accident was happened on that date, definitely the petitioner would have lodged the complaint on the very same day itself. There is some discrepancies in Ex.A2 with regard to the date of accident and the date of certificate issued by the Doctor. All these facts creates a doubt as what is the exact date of accident and whether the accident occurred and the claimant sustained injury only due to the road accident or hit by any other cause. These aspects were very much accepted by the Tribunal and the Tribunal properly considered the same that the claimant has not proved that he sustained injury only due to the road accident and also not proved what is the exact date of accident. The Tribunal considering all the above facts in proper perspective, dismissed the claim petition holding that the appellant failed to prove that the accident had occurred as alleged by him and the date of accident. Since there is no perversity in the reasoning and finding of the Tribunal the same does not warrant any interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed confirming the judgment and decree dated 12.04.2011 made in M.C.O.P.No.1928 of 2003. No costs.

-s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

dpq

To

1. The Motor Accidents Claims Tribunal,
(Principal District Judge), Krishnagiri.

copy to
The Section Officer
VR Section
High Court Madras

+1 cc to Mr.Krishnamoorthy Advocate sr47212

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