

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.943 of 2015

Arumugam

.. Appellant/Petitioner

Vs.

1.S.Babu

2.The United India Insurance Co. Ltd.,
SKS Complex, Opp. to SBI Main Branch,
Sathyamangalam,
Erode District. .. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.01.2013, made in M.C.O.P.No.421 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam.

For Appellant : Mr.Ma.P.Thangavel

For R2 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant, challenging the award dated 09.01.2013, made in M.C.O.P.No.421 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam.

2.The appellant/claimant filed M.C.O.P.No.421 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathyamangalam, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.01.2010. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition by the award dated 09.01.2013.

3.Against the said order of dismissal dated 09.01.2013, made in M.C.O.P.No.421 of 2010, the appellant has come out with the present appeal.

4.The learned counsel appearing for the appellant/claimant

contended that the Tribunal erroneously dismissed the claim petition on the ground that FIR was lodged belatedly on 04.02.2010, while the accident occurred on 27.01.2010. Immediately after the accident, the appellant was taking treatment at Narasiman Hospital at Sathyamangalam and he was admitted in Ganga Hospital at Coimbatore on the same day at 04.17 PM and Ganga Hospital informed the police at Sathyamangalam about the accident. The police after registering the FIR on 04.02.2010, investigated the same and prepared Observation Magazar, rough sketch and filed Charge Sheet. The Tribunal considering Exs.P4 to P6, erroneously dismissed the claim petition based on the minor discrepancies in the evidence of P.W.1. The Tribunal ought to have awarded compensation as mentioned in the grounds of appeal and prayed for allowing the appeal.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the specific case of the 2nd respondent-Insurance Company was that the mini door auto belonging to the 1st respondent was not involved in the accident and accident itself has not occurred. FIR was lodged only on 04.02.2010 and this clearly shows the veracity of the accident. The appellant and the 1st respondent colluded with each other and foisted the case for the purpose of claiming compensation from the 2nd respondent-Insurance Company. The appellant has failed to examine any independent witness to prove that the accident occurred only when he travelled with urea in the auto belonging to the 1st respondent. The Tribunal considering the entire materials on record, has dismissed the claim petition, holding that the deceased failed to prove the accident as claimed by him and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

7.From the materials on record, it is seen that the appellant has stated in the claim petition that while he was traveling in the auto belonging to the 1st respondent along with 15 packs of urea, due to rash and negligent driving by the driver of the mini auto, the said auto capsized and appellant fell down and sustained injury. FIR was lodged with Sathyamangalam Police Station on 04.02.2010. The accident occurred on 27.01.2010. According to the appellant, on the date of accident itself, he was admitted in Ganga Hospital and the Hospital authority on the same day informed the Police at Sathyamangalam. The police has not produced any materials to substantiate the said claim. He has not examined any official from the Hospital. Further, in Ex.P2-wound certificate and in Ex.P7-discharge summary, it is mentioned that the appellant sustained injuries when the auto in which he travelled was

capsized. It is not specifically mentioned in Ex.P2-wound certificate and Ex.P7-discharge summary that the auto in which the appellant was traveling was capsized and he sustained injuries. The Tribunal in view of the said contradiction and the failure on the part of the appellant as alleged by him, coupled with delay in filing the FIR and there was no damage to the vehicle belonging to the 1st respondent as per Ex.P3-the report of the Motor Vehicle Inspector, dismissed the claim petition. The Tribunal has given cogent and valid reason for dismissing the claim petition.

8.In the result, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sathyamangalam.

Copy To

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

+1cc to Mr.T.Ravichandran, Advocate SR.No.7141

+1cc to Mr.M.A.P.Thangavel, Advocate SR.No.7110

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VGII (CO)
GMY (09/05/2019)

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