

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.324 of 2016

M.Manoharan

.. Appellant/Petitioner

Vs.

1.N.Dhayalan

2.United India Insurance Company Limited,
48, Arcot Road, Saligramam,
Chennai - 600 093.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.10.2015 made in M.C.O.P.No.475 of 2014 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

For Appellant : Mr.Ma.P.Thangavel

For R2 : Ms.R.Vijayakamala

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 13.10.2015 made in M.C.O.P.No.475 of 2014 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

2.The appellant is claimant in M.C.O.P.No.475 of 2014 on the file of Motor Accidents Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur. He filed the above said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.05.2014.

3.According to the appellant, on 23.05.2014 at 08.30 hours, while he was riding in his motorcycle on C.T.H.Road, Ambathur near T.I.Miller Company, the lorry belonging to the first

respondent came from weighing machine situated in the opposite side in a rash and negligent manner and dashed against him and caused the accident. Due to the accident, he suffered multiple injuries all over his body and thus filed claim petition claiming compensation against the respondents 1 and 2.

4.The first respondent/owner of the lorry remained exparte before the Tribunal.

5.The second respondent/Insurance Company filed counter statement and denied all the averments made by the appellant/claimant. According to the second respondent, the appellant himself skidded and fell down from his bike and he was also not having valid driving license at the time of accident. The delayed F.I.R. Lodged by the appellant at 11.30 hours against the driver of the lorry belonging to the first respondent is a fabricated one. The appellant himself was a tort feisor and the lorry belonging to the first respondent was not at all involved in the accident. Hence, the second respondent/Insurance Company is not liable to pay any compensation.

6.Before the Tribunal, on behalf of the appellant, two witnesses were examined as P.W.1 and P.W.2 and 9 documents were marked as Exs.P1 to P9. No oral or documentary evidence was let in on behalf of the respondents.

7.The Tribunal considering the pleadings, oral and documentary evidence, especially Ex.P2 and P5/discharge summaries, dismissed the claim petition holding that the accident has not occurred as alleged by the appellant and driver of the first respondent is not responsible for the accident.

8.Challenging the order of dismissal dated 13.10.2015 made in M.C.O.P.No.475 of 2014, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition relying on Ex.P2/discharge summary and the Tribunal ought to have accepted the contents of F.I.R. and come to the conclusion that appellant sustained injuries in the accident as mentioned in the F.I.R. and disbelieved Ex.P2/discharge summary, filed and marked by the appellant. Ex.P2 was recorded as per the version of the wife of the appellant, who was not an eye-witness. The second respondent/Insurance Company did not let in any evidence to disprove the evidence of the appellant and contents of F.I.R. and the learned counsel appearing for the petitioner prayed for allowing the appeal and for awarding compensation.

10.The first respondent/owner of the lorry remained exparte before the Tribunal.

11.Heard the learned counsel appearing for the appellant as well as second respondent-Insurance Company and perused the entire materials on record.

12.According to the appellant, the accident has occurred when the lorry belonging to the first respondent suddenly came to the road from weighing place and crossed the road and dashed against the motorcycle in which the appellant was riding. The accident has occurred due to rash and negligent driving by driver of the lorry belonging to the first respondent. From the materials available on record, it is seen that the appellant failed to substantiate his contention and in Ex.P2/discharge summary, it is mentioned that motorcycle skidded and appellant fell down and sustained injuries. It is admitted that appellant was conscious when he was admitted in the KMC Hospital for treatment. The appellant in cross examination has admitted the contents of Ex.P2/discharge summary. The Tribunal considering Ex.P5/discharge summary, wherein it has been stated that appellant fell down from the bike and there is no external injury and Ex.P1/copy of F.I.R., where there is contradiction with regard to place of accident in Exs.P2 and P1, held that the accident has not occurred as alleged by the appellant.

13.From the materials available on record, it is seen that the Tribunal has considered Exs.P2, P1 and P5 and evidence of appellant as P.W.1 in proper perspective and has held that accident did not occur as alleged by the appellant and dismissed the claim petition. There is no error in the award passed by the Tribunal warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 13.10.2015 made in M.C.O.P.No.475 of 2014. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.III Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee,
Thiruvallur.

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

+1cc to M/s.R.Vijayakamala, Advocate, S.R.No. 105601

+1cc to Mr.P.Thangavel, Advocate, S.R.No. 105721

C.M.A.No.324 of 2016

SAI (CO)
GN(04/09/2020)