

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1072 of 2013

Yuvaraj

... Appellant/Petitioner

Vs

1. Natesan
2. S.Anandan
3. The Oriental Insurance Co. Ltd.,
Arcot Road, Vellore.
4. S.Poomeswaran

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 06.11.2012 made in MCOP.311 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Vellore.

For Appellant : Mr.M.Sivakumar

For respondents : Mr.K.Vinod - R3

Not ready in notice - R4

served - No appearance - R1 and R2

J U D G M E N T

The claim petition MCOP. No.311 of 2010 filed by the Appellant seeking compensation on account of motor accident was dismissed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court) Vellore, on the ground that the Appellant miserably failed to prove that the accident was happened on account of the negligence of the driver of the car/second respondent, owned by the first respondent, and insured with the third respondent.

2. The Appellant met with an accident on 12.01.2010 at about 07.00 P.M. He was proceeding in his motor cycle on Vellore - Chennai National Highways Road, Vellore Bye-Pass near LKMB Workshop. He was on the left side of the road. At that time, the Car viz., Maruti 1000, bearing registration number TN 01 H 4133,

hit against the motorcycle driven by the Appellant. Due to the accident, the Appellant sustained multiple injuries. The Appellant preferred a claim petition before the Tribunal in MCOP.No.311 of 2012 claiming compensation. The driver, the owner of the car and the insurer of the car were shown as the respondents in the claim petition.

3. Before the Tribunal, the Insurance Company took a stand that the cause of the accident was solely on account of the negligent act of the Appellant. As seen from the FIR, the cause of the accident was only due to the rash and negligent driving by the rider of the motorcycle, who is the Appellant/claimant herein.

4. However, it was the contention of the Appellant/claimant, before the Tribunal that the police did not register the complaint given by the Appellant/claimant that only due to the rash and negligent driving by the driver of the insured Maruti Car, the accident had happened. However, as seen from the impugned award, neither an eyewitness nor the pillion rider of the motorcycle was examined as a witness. The rough sketch of the accident was also not marked as an exhibit before the Tribunal, which would reveal the preponderance of probabilities as to how the accident had happened between the two vehicles. Since the Appellant/claimant did not adduce any proper oral and documentary evidence to mulct the liability on the owner and the insurer of the Maruti Car bearing Registration No.TN 01 H 4133, the Tribunal has rightly rejected the claim of the Appellant/claimant.

5. The learned counsel for the Appellant/claimant submits before this Court that the Appellant/claimant will be able to establish his claim against the 3rd respondent/Insurance company as well as the owner (first respondent) of the Maruti Car bearing Registration No. TN 01 H 4133 by letting in additional oral and documentary evidences before the Tribunal, if the matter is remanded back to the Tribunal for fresh consideration. In order not to deprive the Appellant/claimant to claim compensation, if he is able to establish before the Tribunal by letting in additional evidence, this Court is of the considered view that the matter will have to be remanded back to the Tribunal for fresh consideration.

6. For the foregoing reasons, the impugned judgment and decree dated 06.11.2012 passed in MCOP. No.311 of 2010 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore, is hereby set-aside and the matter is remanded back to the same Tribunal for fresh consideration.

- The Appellant/claimant as well as the respondents are permitted to adduce fresh oral and documentary evidences before the Tribunal in support of their respective contentions.
- It is made clear that the Appellant/claimant is not permitted to seek any amendment in the claim petition before the Tribunal.
- The Tribunal is further directed to pass an order on merits, taking into account the case pleaded by the respective parties. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment.

7. In the result, this Civil Miscellaneous Appeal is disposed of. There is no order as to costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

rli

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.C.Prabhakaran, Advocate, S.R.No.25912

C.M.A.No.1072 of 2013

LN(CO)
RLP(02/09/2021)