



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1253 of 2008

Palani

.. Appellant/Petitioner

Vs.

1.Arumugam

2.The Divisional Manager,
New India Assurance Company Limited,
No.1, Officers line,
Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2008 made in M.C.O.P.No.567 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Thiruvannamalai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.R.Sivakumar

For R1 : Set Exparte before the Tribunal

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 03.01.2008 made in M.C.O.P.No.567 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Thiruvannamalai.

3.The appellant is the claimant in M.C.O.P.No.567 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Thiruvannamalai. He filed the said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.04.2002.



4. According to the appellant, on 08.04.2002 at about 12.30 P.M., while he was walking along left side near Saravanapakkam Koottu Road, the driver of the auto belonging to 1st respondent drove the same in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident, the appellant sustained multiple grievous injuries all over his body. Immediately after the accident, the appellant was admitted in the Government General Hospital, Villupuram. Therefore, the appellant filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the auto respectively.

5. The 1st respondent-owner of the auto remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company, being the insurer of the auto filed counter statement and denied all the averments made by the appellant. According to 2nd respondent-Insurance Company, the accident has not occurred as alleged by the appellant. The appellant only suddenly crossed the road and invited the accident. The 1st respondent-owner of the auto did not inform about the accident to the 2nd respondent-Insurance Company. Therefore, the 2nd respondent-Insurance Company is not liable to pay any compensation. The appellant has to prove his age, avocation, income, manner of accident and injuries sustained by him by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

7. The 2nd respondent-Insurance Company filed additional counter statement and denied various averments made by the appellant. According to the 2nd respondent-Insurance Company the appellant's name and address given in the claim petition are false and there was no such person. Originally the victim in the accident died after two years from the date of accident. The said victim was allegedly hit by an auto bearing Registration No.TNF 2800 as per the wound certificate, whereas the appellant was hit by an auto bearing Registration No.TME 2300 as per F.I.R. The owner of the auto bearing Registration No.TME 2300 also stated that he was not aware of the accident and also he does not know the name of the driver. The wife, son-in-law and children of the original victim gave a statement that the victim was hit by an auto and he was alright immediately and after two years from the date of accident, the original victim died due to excessive drinking of alcohol and also because of sickness. The postmortem of the original victim was not done. Subsequently, another person was introduced as the appellant herein. The photograph mentioned in the claim petition does not belong to the original victim. The driving license of the auto was not



available and also the auto was not produced for MVI Inspection. The appellant has filed a false case for claiming compensation and prayed for dismissal of the claim petition.

8. Before the Tribunal, the appellant examined himself as P.W.1 and Dr. Raveendran as P.W.2 and 8 documents were marked as Exs. P1 to P8. The 2nd respondent examined one Saravanan, who is an official from the 2nd respondent-Insurance Company as R.W.1 and one K. Raghu, who is an Investigating Officer as R.W.2 and Investigation Report was marked as Ex. R1.

9. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant failed to prove that he sustained injuries in the alleged accident.

10. Against the said order of dismissal dated 03.01.2008 made in M.C.O.P.No.567 of 2003, the appellant has come out with the present appeal for granting compensation.

11. The learned counsel appearing for the appellant contended that the Tribunal erred in shifting the burden of proof on the appellant in spite of documents filed and marked as Exs. P1 to P8 and the evidence let in by him. The Tribunal ought not to have accepted the evidence of R.W.2, who is the Investigating Officer of the 2nd respondent-Insurance Company and he is an interested witness. In the absence of any independent witness to support the evidence of R.W.2, the Tribunal ought to have rejected the evidence of R.W.2 and allowed the claim petition filed by the appellant. The Tribunal erroneously rejected the claim petition on the ground that appellant has given temporary address as his address in the claim petition. The Tribunal failed to consider Exs. P4 to P8 and the Tribunal misconstrued the evidence let in by the appellant and erroneously rejected the claim of the appellant. The Tribunal failed to consider the evidence of P.W.2/Doctor and prayed for setting aside the award of the Tribunal and allowing the appeal and to award compensation.

12. Mr. R. Sivakumar, learned counsel appearing for the 2nd respondent-Insurance Company made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

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

14. From the materials available on record, it is seen that the appellant has claimed compensation for the injuries sustained in the alleged accident that occurred on 08.04.2002.



To substantiate his contention, the appellant examined himself as P.W.1 and marked 8 documents as Exs.P1 to P8. On the other hand, it is the contention of the 2nd respondent-Insurance Company that the original victim sustained simple injuries and he died after two years from the date of accident due to his ill health. The original victim who sustained injuries in the accident has not filed any claim petition. The appellant who has filed the claim petition is not the person injured in the alleged accident that took place on 08.04.2002. To substantiate the said contention, the 2nd respondent has examined R.W.1, an Official of the 2nd respondent-Insurance Company and R.W.2, Investigation Officer appointed by the 2nd respondent-Insurance Company. From the materials available on record, it is seen that appellant as P.W.1 has admitted that his only identification mark is a black mole in his right palm. As per Ex.P2/Wound Certificate and Ex.P8/Accident Register, the identification of the alleged injured was mentioned as one black mole on the right cheek and one black mole on the left cheek. The identification marks mentioned in Ex.P2/Wound Certificate and Ex.P8/Accident Register do not tally with the identification mark of the appellant. The Tribunal has rightly held that when the identification of the injured person is disputed and R.W.2/Investigation Officer has stated in his evidence that wife, brother and son-in-law of the victim who sustained injuries in the alleged accident gave statement that the injured person died two years after the accident due to his ill health, it is for the appellant to prove by independent witness that he was the person injured in the accident that held on 08.04.2002. Further it is to be taken note that in the claim petition it has been stated that injured person was a Coolie while the appellant in cross examination has stated in the claim petition that he is a Fortune Teller. The Tribunal considering all the materials, dismissed the claim petition by giving cogent and valid reason. There is no reason to interfere with the award passed by the Tribunal warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order of dismissal dated 03.01.2008 made in M.C.O.P.No.567 of 2003. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge,
Thiruvannamalai.

Copy to:

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

+1cc to M/s.M.Malar, Advocate, S.R.No.35944

+1cc to Mr.R.Siva Kumar, Advocate, S.R.No.35840

C.M.A.No.1253 of 2008

AD(CO)

CB(26/08/2021)