

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3614 of 2006

Purushothaman

.. Appellant/ Petitioner

Vs.

1.A. Kumaravel

2.The Divisional Manager,
United India Insurance Co. Ltd.,
No. 1, Katpadi Road,
Vellore 4.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.11.2005, made in M.C.O.P. No. 317 of 2004, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr. S. Vediappan
for Mr. R. Karthikeyan

For Respondents: Mr. D. Bhaskaran (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the dismissal of the award dated 10.11.2005, made in M.C.O.P. No. 317 of 2004, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai, dismissing the claim petition filed by the appellant.

2.The appellant is claimant in M.C.O.P. No. 317 of 2004, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), 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 23.12.2003.

3.According to the appellant, on the date of accident, viz., 23.12.2003, while he stopped his Auto on the left side of the road near Kamarajar Statue and was buying fruits in the bunk shop, Driver of another Auto bearing Registration No. TN-25-C-

0315, belonging to the 1st respondent, drove the same in a rash and negligent manner, hit against him and caused the accident. In the accident, the appellant got fracture of left leg and injuries on the left knee. The accident had occurred only due to rash and negligent driving by the Driver of the Auto belonging to the 1st respondent and hence, filed the present claim petition, claiming compensation against the 1st respondent as owner and 2nd respondent as insurer of the said vehicle.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent, at the time of accident, the Driver of the offending Auto belonging to the 1st respondent did not possess valid driving license to drive the vehicle and there was no R.C. and Permit for the said vehicle. The 2nd respondent also denied the date, manner of the accident and insurance policy of the Auto belonging to the 1st respondent and hence, prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and examined one Doctor as P.W.2 and marked 8 documents as Exs.P1 to P8. No oral and documentary evidence was let in on the side of the respondents.

7.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant failed to prove that the accident occurred due to rash and negligent driving by the Driver of the Auto belonging to the 1st respondent beyond reasonable doubt.

8.Challenging the dismissal of the claim petition by the award dated 10.11.2005, made in M.C.O.P. No. 317 of 2004, the appellant has come out with the present appeal.

9.Learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition filed by the appellant without properly considering the evidence let in by him. The Tribunal ought to have seen that the accident has occurred due to rash and negligent driving by the Driver of the Auto belonging to the 1st respondent, insured with the 2nd respondent-Insurance Company. The Tribunal erroneously held that delay in lodging the complaint by the appellant as well as delay in not lodging the complaint by the authorities in the Government Hospital to the Police are not explained. The Tribunal failed to see that the delay in lodging the complaint is not fatal to the claim of the appellant. The appellant has proved that he suffered 35% disability due to fracture in his left leg and he was permanently disabled to do any job. The Tribunal erred in not considering the documents and oral

evidence in proper perspective and prayed for setting aside the award of the Tribunal and for granting compensation to the appellant.

10.Per contra, Mr. D. Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal.

11.Heard the learned counsel appearing for the appellant as well as well as the 2nd respondent and perused the materials available on record.

12.It is the case of the appellant that due to rash and negligent driving by the Driver of the Auto belonging to the 1st respondent, the accident has occurred on 23.12.2003 and he sustained injuries in the said accident. According to the appellant, the accident has occurred at 3.50 p.m near Kamarajar statue, Tiruvannamalai Town and he got admitted in the Government Hospital, Tiruvannamalai at 4.30 p.m. From the materials on record, it is seen that the appellant was discharged from the Hospital on the same day. The Government Hospital, Tiruvannamalai, where according to the appellant he was admitted, immediately after the accident, did not inform the concerned Police about the accident. The appellant who was discharged immediately, had lodged the complaint only on 26.12.2003. The appellant has not produced any evidence to show that after being discharged from the Government Hospital, he took treatment in some other Hospital. The appellant also has not filed any documents with regard to treatment taken and injuries suffered. The Tribunal considering the above materials and failure on the part of the appellant to file the complaint without delay, rejected the claim of the appellant that he sustained injuries in the accident that occurred due to rash and negligent driving by the Driver of the Auto belonging to the 1st respondent. There is no error in the said reasoning of the Tribunal warranting interference by this Court.

13.In the result, the appeal is dismissed and the award of the Tribunal dated 10.11.2005 made in M.C.O.P. No. 317 of 2004 is confirmed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

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

+lcc to Mr.Bhaskaran , Advocate SR.No. 20722

C.M.A. No. 3614 of 2006

A.SK(28.12.2020)



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