

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2577 of 2008

Sethuraman ... Appellant/ Petitioner
Vs

1. R.Kunju
2. The New Assurance India Company Limited,
Rep. By its Branch Manager,
Nagapattinam Town,
Nagapattinam District.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 17.12.2007 made in MCOP.No.263 of 2005 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Tiruvarur.

For appellant : Mr.M.Thamizhvel
For respondents : Mr.R.Baskar - R1
Ms.R.Sreevidhya - R2

J U D G M E N T

This appeal has been filed by the claimant aggrieved by the dismissal of his claim petition filed before the Motor Accident Claims Tribunal, Tiruvarur in MCOP. No.263 of 2005, dated 17.12.2007.

2. The appellant/claimant is said to have sustained injuries on 23.03.2005 as a result of the accident caused by the vehicle, owned by the first respondent and insured with the second respondent/insurance company. The appellant/claimant preferred a claim petition seeking compensation for the injuries sustained by him against the respondents before the Motor Accident Claims Tribunal, Tiruvarur in MCOP. No.263 of 2005.

3. The Tribunal, by its impugned judgment and decree dated 17.12.2007, in MCOP. No.263 of 2005, dismissed the claim of the appellant on the ground that

a. there was a delay in registering an FIR against the driver of the insured vehicle; and

b. the appellant has not established that he had sustained injuries on 23.03.2005 being the date of the accident, since the discharge summary does not reveal the fact that he underwent treatment only on 23.08.2005 for his fracture.

4. Before the Tribunal, the appellant/claimant has filed 16 documents, which were marked as Ex.P1 to Ex.P16 and two witnesses were examined viz., PW1- the claimant himself and PW2

- Doctor, who examined him. On the side of the respondents, neither any document was filed nor any witness examined.

5. The registration of the FIR against the driver of the insured vehicle has not been disputed by the second respondent/insurance company before the Tribunal. The FIR has been admittedly registered only against the driver of the insured vehicle. In the counter statement filed by the second respondent/insurance company before the Tribunal, they have stated that there was a delay of four days in lodging the FIR and they have also disputed the injuries allegedly sustained by the appellant/claimant. However, they have not alleged any fraud or fabrication of any document committed by the appellant/claimant. The delay in registering an FIR is only 4 days as seen from Ex.P1, which is the FIR.

6. The appellant/claimant has claimed that he sustained fracture in the left leg below his knee as a result of the accident. When he sustained a fracture, a delay of mere 4 days in lodging a complaint before the Police against the driver of the insured vehicle cannot be construed as an inordinate delay. However, the Tribunal has considered the same to be an unexplained delay and rejected the claim petition on that ground also.

7. Insofar as the second ground is concerned, the Tribunal without any evidence adduced by the second respondent/insurance company that the appellant/claimants has fabricated the Accident Register (Ex.P5) on its own without even sending to an expert with regards to its genuineness, has given a finding that the appellant/ claimant has fabricated Ex.P5, by modifying the date from 27.03.2005 to 23.03.2005. This Court is of the considered view that the Tribunal has misdirected itself by assuming without basis that the document viz., Ex.P5 has been fabricated by the appellant/claimant without there being any supporting evidence placed before it. Further, as seen from the impugned award, the respondents have neither let in oral or documentary evidence. While that be so, the Tribunal ought not to have rejected the claim by giving a finding on its own, without any basis that the document Ex.P5 has been fabricated by the appellant/claimant only to unlawfully enrich himself by filing a claim before the Motor Accident Claims Tribunal.

8. This Court is of the considered view that the Tribunal ought not to have rejected the claim without there being any contra evidence.

9. For the foregoing reasons, this Court is of the considered view that this is a fit case for remanding the matter to the Tribunal for fresh consideration, in accordance with law, after giving opportunity to both the appellant as well as the respondents, to adduce additional oral and documentary evidence, if necessary, in support of their respective contentions.

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10. Accordingly, the impugned judgment and decree dated 17.12.2007 passed in MCOP. No.263 of 2007 by the Motor Accident

Claims Tribunal, Tiruvarur, is hereby set-aside and the matter is remanded back to the same Tribunal for fresh consideration.

11. The Tribunal is further directed to pass an order on merits, taking into account the case pleaded by the respective parties. The appellant and the respondents are permitted to amend their respective pleadings if so required and they shall also adduce additional oral and documentary evidence in support of their respective contentions. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment.

12. In the result, in view of the above direction, this Civil Miscellaneous Appeal is disposed of. There is no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Motor accident Claims Tribunal
Tiruvarur.

Copy to:

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

+1cc to Mr.M.Thamizvel , Advocate SR.No. 26006

+1cc to Mr.R.Baskar , Advocate SR.No. 26065

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