

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2791 of 2008

Abdul Jabbar

...Appellant /Petitioner

Versus

1.M/s.Numeric Power System,
No.83, Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

2. The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree in MCOP No.2938 of 2001, dated 31.08.2007 on the file of the Additional District Sessions Judge, (III Fast track Court), Chennai.

For Appellant : Mr.Ravindran
for Mr.A.S.Shanmugaraj

For Respondents: Ms.C.Sangamithra for R2
R1-Served - No appearance

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant challenging the award dated 31.08.2007 passed by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court - III), Chennai in MCOP No.2938 of 2001.

2. The appellant is the claimant in MCOP No.2938 of 2001. It is his case that he sustained injuries on 18.11.2000, as a result of an accident caused by a motor cycle bearing Registration No.TN-07-F-8135 owned by the first respondent and insured with the second respondent. He preferred a claim

before the Motor Accidents Claims Tribunal seeking a compensation of Rs.1,00,000/- for the injuries sustained by him, as a result of the said accident.

3. The Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court - III), Chennai by its award dated 31.08.2007 passed in MCOP No.2938 of 2001 dismissed the claim of the appellant on the ground that he has failed to establish that the motor cycle bearing Registration No.TN-07-F-8135 was responsible for the cause of the accident, which resulted in injuries sustained by him.

4. Aggrieved by the said findings of the Tribunal, this appeal has been filed by the appellant / claimant.

5. Heard Mr.Ravindran, learned counsel for the appellant and Ms.C.Sangamithra, learned counsel for the second respondent / Insurance Company. The first respondent has been duly served through substituted service(paper publication) and his name has been printed in the cause list today and despite the same, there is no representation on their side.

6. Before the Tribunal a categorical stand was taken by both the respondents that the Motor cycle bearing Registration No. TN-07-F-8135 was not involved in the accident, as claimed by the appellant / claimant in his claim petition. It was the contention of the appellant / claimant before the Tribunal that after the accident, he was hospitalised and only through his friend by name Jaffar, who was an Eye witness to the accident, he was came to know about the involvement of the vehicle owned by the first respondent and insured with the second respondent.

7. Before the Tribunal, the alleged eye witness Jaffar was not examined as a witness by the appellant / claimant. The complaint against the Driver of the Motor cycle was also given only by the appellant / claimant that too after 38 days and the FIR was registered accordingly. If the statement of the appellant / claimant has to be believed, Jaffar, the alleged eye witness to the accident and a friend of the appellant / claimant could have very well given the complaint immediately, after noticing the registration number of the motor cycle, which allegedly caused the accident. The alleged eye witness Jaffar has never given any complaint about the involvement of the vehicle nor was he examined as a witness before the Tribunal.

8. The FIR (Ex.P1) has been registered belatedly that too lodged by the appellant /claimant. The Tribunal has also taken into consideration the vehicle movement register which was marked as Ex.R2 and found that the motor cycle which was alleged to have been involved in the accident was stationed at

the first respondent Factory at Semancherry at the time of the accident. The Tribunal has also taken into consideration, the oral evidence of Palanichmy, the employee of the first respondent, who has categorically deposed that the two wheeler was stationed in the Factory at Semmanchery on the relevant date and time of accident and not at the place of the accident, where the appellant / claimant is said to have sustained the injuries. The discharge summary issued by Government Royapettah Hospital (Exs.P3 and P4) also does not disclose the Registration number of the vehicle, which was involved in the accident. The Tribunal has taken into consideration the said factor also. Only after considering the aforementioned evidence, the Tribunal has rightly rejected the claim of the appellant / claimant on the ground that the motor cycle owned by the first respondent / appellant is not involved in the accident.

9. For the foregoing reasons this Court does not find any merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Additional District Sessions Judge,
(III Fast track Court),
Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

C.M.A.No.2791 of 2008

nmi[co]
srg 27/11/2020