

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3064 of 2008

Minor Srikanth rep by his
father Mr.Poongavanam

...Appellants/Claimant

Vs

1.C.M.Annamalai

2.The Divisional Manager,
New India Assurance Company Ltd.,
No.1, Officers Lane, Vellore. Respondents /
Respondents

PRAYER: This Civil Miscellaneous appeal is filed U/s 173 of Motor Vehicles Act to set aside the Decree and Judgment passed in M.C.O.P.No.54 of 2004 dated 27.05.2005 on the file of the Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Tiruvannamalai.

For appellant :Mr.S.Kumaradevan
For respondent-2 :Mr.M.Krishnamoorthy
For Respondent No.1 :Not ready notice

J U D G M E N T

This appeal has been filed against the dismissal order passed in M.C.O.P.No.54 of 2004 dated 27.05.2005 on the file of the Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Tiruvannamalai.

2.The appellants is the claimant in the above M.C.O.P and he filed this petition for claiming compensation for the injuries sustained in the road accident that took place on 27.05.2005.

3.The brief facts of the case is as follows:

On 22.02.2002 at about 2.00 p.m when the appellant was proceeding near Vedantham Village a lorry bearing Registration No.D.S.P.1519 came in the opposite direction and dashed against the appellant. Due to the impact the appellant sustained grievous injuries all over the body. The accident occurred due to the rash and negligent driving of the driver of the lorry. Hence, he filed a claim petition before the claims tribunal in M.C.O.P.No.54 of 2004 on the file of the Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Tiruvannamalai, seeking Rs.3,00,000/- as compensation.

4.The accident was reported to the Kilpennathur police Station and a case in Cr.No.112/2002 was registered under Sections 279 and 339 of I.P.C. was filed against the driver of the lorry on 07.03.2002.

5.The Tribunal dismissed the claim petition on the ground that the F.I.R was belatedly registered i.e after 13 days, inspite of the fact that the distance between the Jurisdictional police station and the accident spot was only 8 kilometers and there was no explanation for the delay. The appellant in the claim petition before the Tribunal has mentioned that he was taken treatment in Thiruvannamalai Government Hospital, but to substantiate the same no certificate was not produced. The Motor Vehicle Inspector also conducted the investigation after a lapse of 20 days from the date of accident i.e on 14.03.2002. P.W.2/Dr.Navindran examined the appellant and issued disability certificate/Ex.P.3 but in his evidence, he failed to narrate the vital fact that on what basis he has issued the disability certificate.

6. Before the Tribunal on the side of the appellant two witnesses were examined i.e.P.W.1 and P.W.2 and marked 4 documents ie Exs.P.1 to P.4. The respondents have not let in any evidence nor marked any documents. Among the four documents produced by the appellant, nothing corroborates with the case of the claimant, even to arrive at a decision that the accident has taken place. Thus, the Tribunal held that there was a suspicion whether the accident has happened or not and concluded that the petition itself is not maintainable and dismissed the petition.

7.Aggrieved against the dismissal order passed by the Claims Tribunal, the appellants are before this Court.

8.The learned counsel for the appellant contended that the Tribunal erred in dismissing the claim petition and not even considering the fact that the injured is a school going student and no parent will foist a false case against their own son. He would further contend that the Court below had mechanically endorsed the evidences and documents adduced before it and passed the dismissal order which is arbitrary, illegal and against the principles of justice. Hence, he prays this Court to remitt the matter back to the Court below.

9.The learned counsel for the second respondent/Insurance Company contended that the Tribunal after considering each and every aspect and dismissed the claim petition and no interference is called for.

10.Despite serving notice on the first respondent the same was returned with an endorsement "Incorrect Address". Hence, the appeal itself is taken up for final disposal, since the disposal of this case will not affect the first respondent in any manner.

11.On a perusal of the impugned award passed by the Tribunal and considering the facts and circumstances of the case, this Court is of the considered opinion that the Trial Court can re-appreciate the evidences and the documents submitted once again. Therefore, the Judgment passed in M.C.O.P.No.54 of 2004 on the file of the Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Tiruvannamalai, dated 19.02.2013 is hereby set aside and the matter is remanded back to the the Court below for fresh disposal. The learned Judge of the Motor Accident Claims Tribunal, Tiruvannamalai is directed to give adequate opportunity for both sides to let in further oral and documentary evidence, if any and quantify the compensation payable to the claimants and dispose the case, in accordance with law as expeditious as possible.

This appeal is disposed off accordingly. No Costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1 The Motor Accident Claim Tribunal
cum Chief Judicial Magistrate, Tiruvannamalai

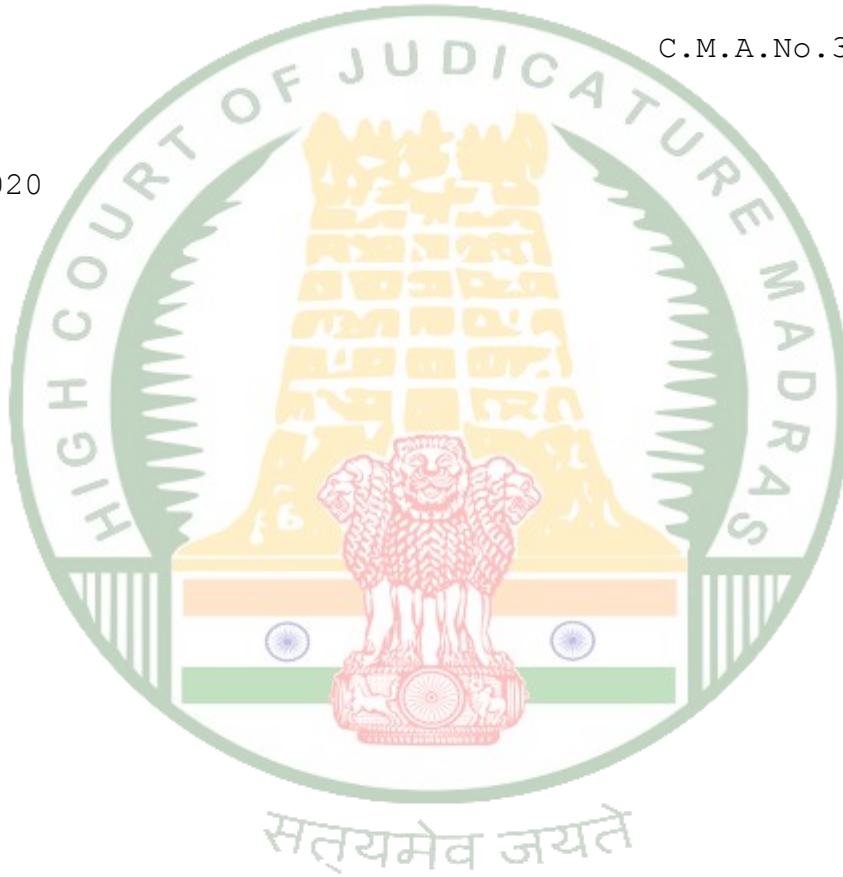
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.S.kumara Devan Advocate sr15469

+1 cc to Mr.M.Krishnamoorthy Advocate sr15587

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