

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1983 of 2009

Madalai Muthu

...Appellant/Claimant

Vs

1.K.Gunasekaran

2.National Insurance Co.,Ltd.,

Branch Office-I,

Post Box No.15,

No.1, Govindasamy Pillai Street,

Near Old Bus Stand, Salem-1.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the common judgement and decree dated 13.08.2007 made in M.C.O.P.No.1133 of 2003, on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Salem.

For Appellant : Mr.S.Suresh Kumar

For R2 : Mr.E.Rajadurai

For Mr.N.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 13.08.2007 made in M.C.O.P.No.1133 of 2003, on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Salem.

2.The appellant is the claimant in M.C.O.P.No.1133 of 2003, on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Salem. He filed the above claim petition, claiming a sum of Rs.9,50,000/- as compensation for the injuries sustained by him in the accident that took place on 09.08.2003.

3.According to the appellant, that on 09.08.2003 at about 07.45 a.m., after supplying milk to a Tea Shop in Salem New Bus Stand, while he was returning to home in his bicycle, by proceeding slowly on the extreme left side of the Omalur to Salem Main Road, near Captain Petrol Bunk, one Auto Rickshaw

bearing Registration No.TNS-3049 came behind the bicycle in a high speed even without honking in a rash and negligent manner and dashed the bicycle. Due to the said impact, the appellant fell down and sustained head injury. Therefore, the appellant has filed the above claim petition, claiming a sum of Rs.9,50,000/- as compensation for the injuries sustained by him against the respondents 1 and 2 being the owner and insurer of the auto respectively.

4.The 1st respondent/owner of the Auto remained ex-parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent driving by the appellant and the alleged accident has not occurred as stated by the 1st respondent. The 1st respondent only with a view to get compensation, in connivance of the 2nd respondent, gave false complaint that the Auto belonging to the 2nd respondent was involved in the accident after a delay of 8 days. The 1st respondent has to prove his age, avocation, income, nature of injuries, disability and period of treatment by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1, one Jeeva Mari was examined as P.W.2, Dr.J.Gurunathan was examined as P.W.3, one Stanley was examined as P.W.4, one Chinnappan was examined as P.W.5, one Mani was examined as P.W.6 and Dr.Pugalendhi was examined as P.W.7 and marked thirty one documents as Exs.A1 to A31. On the side of the 2nd respondent/Insurance Company, one G.I.Ramamurthi was examined as R.W.1, one Mahendiran was examined as R.W.2 and one Rathina Vel was examined as R.W.3 and five documents were marked as Exs.R1 to R5.

7.The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellant has not established the fact that he was hit by the auto belonging to the 1st respondent and he failed to prove that he suffered injuries in the road traffic accident as alleged by him.

8.Challenging the order of dismissal dated 13.08.2007 made in M.C.O.P.No.1133 of 2003, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the appellant while returning after supplying milk, the

driver of the Auto belonging to the 1st respondent herein dashed against the bicycle in which the appellant was riding and caused the accident. Due to the accident, the appellant suffered head injuries and skull fracture. The appellant examined P.W.1 to P.W.7 and proved that the accident has occurred due to rash and negligent driving by the driver of the Auto belonging to the 1st respondent herein and the nature of injury sustained by him in the accident. The Tribunal failed to consider Ex.A2/wound certificate which proves that the appellant suffered injuries in the accident. The Tribunal failed to consider Ex.P4/rough sketch and Ex.P6/judgement in the Criminal Court and erroneously dismissed the claim petition and prayed for setting aside the award of the Tribunal and for granting compensation and directing respondents to pay the compensation for the injuries sustained by him in the accident.

10.The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award of the Tribunal and prayed for dismissal of the appeal.

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

12.It is the contention of the appellant that while he was riding his bicycle, the Auto belonging to 1st respondent, insured with 2nd respondent driven by its driver in a rash and negligent manner dashed against the bicycle in which the appellant was riding and caused the accident. Due to the same the appellant sustained injuries. To prove the same, the appellant examined P.W.4 and P.W.6 who are the eye-witnesses and marked Ex.A1/FIR. On the other hand, it is the contention of the 2nd respondent/Insurance Company that the accident did not happen as alleged by the appellant and the appellant in collusion with 1st respondent has made false claim against the 2nd respondent/Insurance Company. To substantiate the said contention, the 2nd respondent examined R.W.2/investigator and marked Ex.R1.

13.From the award of the Tribunal, it is seen that as per Ex.B1-discharge summary the appellant was admitted in the hospital, wherein, it was recorded as "history of sudden loc decreased preceded by fall". P.W.7/Doctor in Ex.B2/case sheet has recorded that the appellant fell down and became unconscious and on investigation by the doctor, it was found that there was a blood clot in the right side of the brain and hence he was unconscious. In the medical report, it has been stated that the appellant fell down and sustained injuries and it was not stated that the appellant sustained injuries in the road accident.

14.The learned counsel appearing for the appellant relied on Ex.A2/wound certificate and contended that in the wound certificate it has been rightly mentioned that it is a history of road traffic accident Auto hit against the cyclist and the wound certificate is the first document. The learned counsel appearing for the appellant further relied on Ex.A1-FIR and judgment of the Criminal Court, which was registered against the driver of the Auto. The Tribunal rejected the FIR on the ground that there is contradiction in the recording of the FIR. Further, Ex.A2-wound certificate was not proved by examining the doctor who has issued the certificate. The Tribunal considering all the materials on record especially P.W.7-Doctor, Ex.B1/discharge summary and Ex.B2/case sheet, held that appellant failed to prove that he suffered injuries in the road traffic accident as alleged by him and dismissed the claim petition. The Tribunal has given valid reason for dismissing the claim petition and there is no error in the said finding of the Tribunal warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 13.08.2007 in M.C.O.P.No.1133 of 2003. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

- 1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.II,
Salem.

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

+1 cc to Mr.N.Vijayaraghavan, Advocate Sr.No. 19886
+1 cc to M/s.S.Suresh kumar, Advocate Sr.No. 19500

C.M.A.No.1983 of 2009

VBA (CO)

RMP(18/12/2020)