

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1476 of 2011

M.G.Subramani
S/o.Gopalsamy

... Appellant

vs.

1.R.Chidambaram
S/o.Ramanujam

2.United India Insurance Co. Ltd.,
Divisional Office, M.M.Reddy Complex,
12003-A, Old Bangalore Road,
Hosur

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in MCOP.No.337 of 2006 on the file of the Motor Accident claims Tribunal cum II Additional Subordinate Judge, Salem dated 02.12.2010.

For Appellant : Mr.C.Kulanthaivel

For Respondent 2 : Mrs.R.Sreevidhya

Not ready in notice reg. R1

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the claimant challenging the impugned judgment and decree dated 02.12.2010 passed by the Motor Accident Claims Tribunal (II Additional Subordinate Judge, Salem) in MCOP.No.337 of 2006.

2. The Appellant/claimant is alleged to have sustained injuries as a result of an accident on 08.09.2005 caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by him as a result of the accident.

3. The Tribunal under the impugned judgment and decree dismissed the claim of the Appellant/claimant on the ground that there was a delay in lodging FIR Ex.P1 and the wound certificate Ex.P2 reveals that the Appellant/claimant was medically examined only on 12.09.2005, even though the accident is alleged to have taken place on 08.09.2005 itself. The Tribunal has also observed that the police have also not been intimated immediately after the accident. The Tribunal has held that the case has been registered based on a false complaint given by the Appellant and the Appellant has failed to establish that the injuries noted in the wound certificate Ex.P2 are only due to the alleged road traffic accident.

4. Aggrieved by the findings of the Tribunal and consequential dismissal of the claim, the Appellant has preferred this Appeal.

5. Heard Mr.C.Kulanthaivel, learned counsel for the Appellant as well as Mrs.R.Sreevidhya learned counsel for the second respondent.

6. Ex.P1 - FIR and Ex.P2 - Wound Certificate are the primary reasons for rejection of the claim by the Tribunal. Ex.P2-Wound Certificate reveals that the Appellant/claimant was referred by the ESI Hospital to Government Hospital, Hosur. The relevant portion of wound certificate Ex.P2 is extracted hereunder:

"Referred from ESI Hospital, Hosur for AR entry alleged to have sustained injury while he was driving a two wheeler as a pillion rider when he was hit by a two wheeler on 08.09.2005 at around 7.50 A.M near Mookandapalli Ganga Water supply was treated at ESI Hospital, Hosur".

7. It is the contention of the Appellant in this appeal that the accident happened on 08.09.2005 and he was given first aid treatment by ESI Hospital and thereafter referred to Government hospital, Hosur by ESI Hospital on 12.09.2005. However, the same has been disputed by the second respondent insurance company before this Court.

8. The Tribunal has rejected the claim on the ground that no records have been placed by the Appellant with regard to his treatment at ESI Hospital prior to 12.09.2005 i.e., between 08.09.2005 and 12.09.2005. No contra evidence has been produced by the second respondent insurance company before the Tribunal to conclusively establish that the Appellant/claimant never took treatment at ESI Hospital between 08.09.2005 and 12.09.2005. While that be so, the Tribunal on its own, without any basis has doubted the accident and has rejected the claim of the Appellant/claimant.

9. Being a benevolent and beneficial legislation, the Tribunal ought to have given sufficient opportunity to the Appellant/claimant to place all evidence that is required to substantiate his claim that the accident happened on 08.09.2005 and only due to the rash and negligent driving by the driver of the vehicle insured with the second respondent insurance company. However, as seen from the impugned judgment and decree, as observed earlier, the Tribunal without any basis has rejected the claim for the aforementioned reasons.

10. The Appellant/claimant has also failed to produce any documents in respect of his contention that immediately after the accident which took place on 08.09.2005, he had taken treatment at ESI Hospital till 12.09.2005, when he was referred to Government Hospital, Hosur. Being a benevolent and beneficial legislation, in case, the accident is a genuine one, the Appellant/claimant who alleges to have sustained injuries as a result of the said accident should not be deprived of his legitimate right to claim compensation.

11. There was a delay of only 12 days in lodging FIR and the Tribunal has rejected the claim on this ground also. The Appellant/claimant in his oral evidence has deposed that the said delay was only due to his inability to immediately lodge a complaint in view of his injuries. While that be so, the Tribunal ought to have considered the nature of injuries allegedly sustained by the Appellant/claimant but no proper reasoning has been by the Tribunal for rejecting the explanation given by the Appellant for the delay in lodging the FIR.

12. For the foregoing reasons, this Court is of the considered view that since the Tribunal has not appreciated the evidence in a proper manner and has not give proper reasoning for rejecting the claim, the matter will have to be necessarily remanded back to the Tribunal for fresh consideration in accordance with law after giving sufficient opportunity to both the Appellant as well as the respondents to adduce further evidence in support of their respective contentions.

13. In the result, the impugned judgment and decree dated 02.12.2010 passed by the Motor Accident Claims Tribunal cum II Additional Subordinate Judge, Salem in MCOP.No.337 of 2006 is set aside and this Appeal is disposed of by remanding the matter back to the Tribunal for fresh consideration in accordance with law, after giving sufficient opportunity to the Appellant as well as to the respondents to adduce further evidence in support of their respective contentions and the Tribunal is directed to pass final orders in MCOP.No.337 of 2006 within a period of ten months from the date of receipt of a copy of this Judgment. It

is made clear that both the Appellant as well as the respondents are not permitted to amend their respective pleadings which they had already filed before the Tribunal.

Sd/-
Assistant Registrar(CCC)

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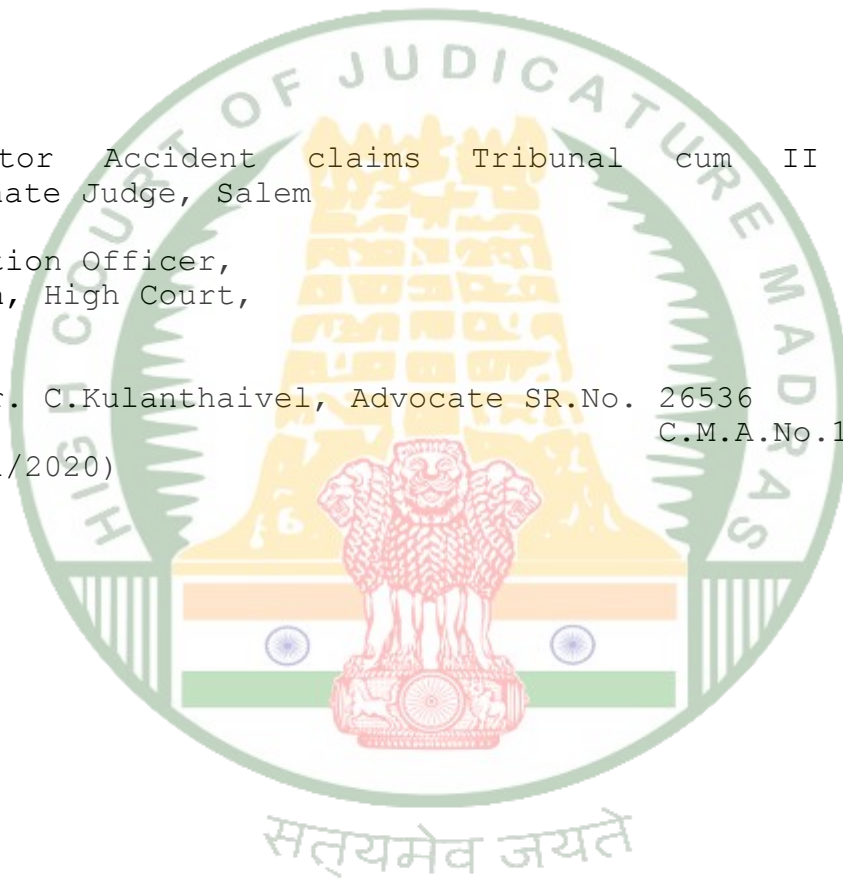
Sub Assistant Registrar

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To

1.The Motor Accident claims Tribunal cum II Additional
Subordinate Judge, Salem

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr. C.Kulanthaivel, Advocate SR.No. 26536
C.M.A.No.1476 of 2011
A.SK(24/11/2020)



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