

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 882 of 2009

M. Munna Farith

.. Appellant/Claimant

(Sole appellant declared as major and his father and natural guardian S.B. Muzeebullah discharged from the guardianship vide order of this Court dated 12.03.2020 made in M.P. Nos. 1 and 2 of 2015)

Vs.

1.Prakash

2.Tamilnadu State Transport Corporation,
rep. By its Managing Director,
Coimbatore Division - II,
Erode 1.

3.S.G. Noor Mohammed

4.P. Mani Raj

5.M/s. United India Insurance Co. Ltd.,
rep. By its Branch Manager,
No. 3, Main Road,
Gobichettipalayam.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.05.2003, made in M.C.O.P. No. 147 of 2002, on the file of the Fast Track Court No.2, Additional District Judge, (Motor Accident Claims Tribunal), Sathyamangalam.

For Appellant : Mr. K. Goviganesan

For Respondents: Mr. A. Sundaravadhanan (for R2)
No appearance (for RR4 & 5)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the dismissal of the award dated 23.05.2003, made in M.C.O.P. No. 147 of 2002, on the file of the Fast Track Court No.2, Additional District Judge, (Motor Accident Claims Tribunal), Sathyamangalam.

2.The appellant is the claimant in M.C.O.P. No. 147 of 2002, on the file of the Fast Track Court No.2, Additional District Judge, (Motor Accident Claims Tribunal), Sathyamangalam. He filed the said claim petition, claiming a sum of Rs.8,15,500/- as compensation for the injuries sustained by him in the accident that took place on 11.02.2001.

3.According to the appellant, on the date of accident, viz., 11.02.2001, while he was travelling as pillion rider in the Motorcycle bearing Registration No. TN-36-D-0303 at Sathy-Punjai Puliampatti road, Vanniarpatti, driven by the 3rd respondent herein, 1st respondent, driver of the Bus bearing Registration No. TN-33-N-1282, belonging to the 2nd respondent, drove the same in a rash and negligent manner and dashed on the back side of the Motorcycle in which the appellant travelled. As a result of which, the appellant and the 3rd respondent were thrown out of the vehicle and sustained injuries. The accident had occurred only due to rash and negligent driving by the 1st respondent, driver of the Bus and hence, the appellant filed the claim petition, claiming compensation against the respondents 1 and 2, who are the driver and owner of the Bus and respondents 3 to 5 who are the rider, owner and insurer of the Motorcycle respectively.

4.The respondents 1, 3 and 4 remained exparte before the Tribunal.

5.The 2nd respondent-Transport Corporation filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent, the accident did not occur as alleged by the appellant. This appellant denied the manner and date of accident, injuries sustained, age, avocation and income of the appellant. The complaint has been given only after a lapse of 6 months. There is no cause of action to file the claim petition as the accident did not occur and hence, prayed for dismissal of the claim petition.

6.The 5th respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 5th respondent, the accident has occurred only due to rash and negligent driving of the Bus by the 1st respondent. This respondent denied the manner and date of accident, injuries sustained, age, avocation and income of the appellant. In any event, the total compensation claimed by the appellant is excessive and hence, prayed for dismissal of the claim petition.

7.Before the Tribunal, the appellant examined 7 witnesses as P.W.1 to P.W.7 and marked 30 documents as Exs.P1 to P30. The

respondents examined the 1st respondent, driver of the Bus as R.W.1 and marked one document as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, did not accept the evidences of P.W.4 and P.W.5 and dismissed the claim petition, holding that the accident did not occur due to rash and negligent driving of the Bus by the 1st respondent.

9.Challenging the dismissal order dated 23.05.2003, made in M.C.O.P. No. 147 of 2002, the appellant has come out with the present appeal.

10.Learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition on the ground that no accident has taken place as alleged by the appellant. The Tribunal erroneously placed much reliance on the delay in lodging the complaint and registration of the FIR. The FIR is not mandatory for claiming compensation for the injuries sustained in the road accident. The Tribunal failed to consider the evidence of P.W.5, who has categorically stated that he gathered information about the accident from the Police Station and published the news in Dinamalar paper on 19.02.2001, for the accident that took place on 12.02.2001. In view of the same, the Tribunal ought to have held that the claim of the appellant is genuine and granted compensation as claimed by the appellant. The Tribunal ought to have seen that the appellant suffered severe injuries which affected his normal life and prayed for allowing the appeal.

11.Though notice has been served on the respondents 4 and 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as well as the 2nd respondent-Transport Corporation and perused the materials available on record.

13.It is the case of the appellant that on 11.02.2001, he was travelling as pillion rider in the Motorcycle belonging to the 4th respondent and driven by the 3rd respondent. At that time, the 1st respondent drove the Bus belonging to the 2nd respondent in a rash and negligent manner and dashed against the Motorcycle and caused the accident, in which the appellant sustained grievous injuries. To substantiate this contention, the appellant examined P.W.1 to P.W.5 and marked Exs.P1 to P30. On the other hand, it is the contention of the respondents 1 and 2 that no such accident has occurred as alleged by the appellant. The appellant has given complaint only on 14.08.2001, while the

accident has occurred on 11.02.2001. No explanation was given by the appellant for the delay in lodging the complaint. The Police, on receipt of complaint, inspected the alleged accident spot, prepared magazar and stated that there is no evidence to show that accident has occurred on 11.02.2001. Further, the 1st respondent, driver of the Bus who was examined as R.W.1 denied the occurrence of the accident. Ex.R1, the final report was marked through R.W.1. The Tribunal considered Ex.R1, wherein it has been stated that false complaint has been given. There is no evidence for the accident as alleged by the appellant and he has lodged the false complaint to claim the compensation from the Insurance Company. The Tribunal has also taken note of all the facts that were mentioned in the wound certificate - Ex.P6, which states that when appellant was brought to the Hospital, there were 5 wounds and wounds 1, 2 and 3 were already stitched. The appellant has not explained when and where the wounds 1 to 3 were stitched. No document was filed to show that he sustained injuries in the road traffic accident.

14.From the award of the Tribunal, it is seen that minor victim's father who filed claim petition, as guardian of minor, is employed as Secretary in a Co-operative Society and 3rd respondent who was driving the Motorcycle is a Computer Graduate. In spite of being well educated, they have not given any complaint at the earliest, within reasonable time. The 3rd respondent herein, examined as P.W.3, has not explained the delay. The contention of the learned counsel appearing for the appellant that lodging a complaint or registering the FIR is not mandatory for claiming compensation for the injuries sustained in the road traffic accident, will not apply to the facts of the present case. From the award of the Tribunal, it is seen that the appellant has failed to prove that the accident has occurred as alleged by him. The Tribunal has appreciated all the materials on record placed before it and by giving valid and cogent reason, dismissed the claim petition. There is no error or perversity in the award of the Tribunal warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court No.2,
(Motor Accident Claims Tribunal),
Sathyamangalam.

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

+1 CC to Mr.A. Sundaravadhanan, Advocate sr 23258

+1 CC to Mr.K. Govi Ganesan, Advocate sr 22834.

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VBA (CO)
SP(19/11/2020)



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