

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED.06.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2781 of 2011

Puttaraj

... Appellant/ Petitioner

vs.

1.M.Saravanan

2.HDFC Ergo General Insurance Company Ltd.,
Empire Arcade, No.356/1, First Floor,
Omalar Main Road,
Opposite New Bus Stand,
Salem-4.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 14.06.2011 made in MCOP.No.85 of 2010 on the file of the Motor Accident Claims Tribunal, (Additional District Judge and Fast Track Court, Dharmapuri)

For Appellant : Mr.V.Kumaravelan

For Respondent 2 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

For Respondent 1 : No appearance

JUDGMENT

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

This appeal has been filed by the claimant aggrieved by the judgment and decree dated 14.06.2011 passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court, Dharmapuri) in MCOP.No.85 of 2010 dismissing his claim seeking compensation on the ground that the Appellant/claimant has not been able to establish before the Tribunal that he sustained injuries as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent.

2. Heard Mr.V.Kumaravelan, learned counsel for the Appellant and Mr.E.Raja Durai, learned counsel representing Mr.M.B.Gopalan learned counsel for the second respondent.

Despite service of notice on the first respondent, there is no representation on his side.

3. The Appellant/claimant was one amongst the injured persons in an accident which took place on 30.09.2009 caused by a vehicle owned by the first respondent and insured with the second respondent. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.85 of 2010 seeking compensation of Rs.4,54,000/- from the respondents for the injuries sustained by him as a result of the said accident. The other injured persons have also filed separate claims before the same Tribunal and their claim petitions have been numbered separately and disposed of by a common award which is impugned in this appeal.

4. Before the Tribunal, number of documents were filed by the claimants in support of their claim which were marked as Exhibits. The Appellant/claimant was also examined as a witness. The second respondent insurance company has also filed seven documents before the Tribunal which were marked as Exhibits and witnesses were also examined on their side.

5. Ex.P26 is the accident register pertaining to the involvement of the Appellant/claimant in the accident and Ex.P27 is the discharge summary issued by the hospital in the name of the Appellant/claimant. It is the contention of the Appellant/claimant as seen from his claim petition that he sustained the following injuries namely (a) lacerated injury near left eye brow, (b) Bleeding from mouth and ear and (c) a lacerated injury over right finger with fracture as a result of the accident. It is also his case that he was hospitalised at Government Medical College Hospital, Dharmapuri from 30.09.2009 to 06.10.2009 and he was also treated as an outpatient from 06.10.2009 onwards in the same hospital. The Tribunal has rejected the claim of the Appellant/claimant only on the ground that the Doctor of the Appellant/claimant who examined him was not examined as a witness before the Tribunal.

6. The learned counsel for the Appellant has also submitted before this Court that the Appellant/claimant will be able to establish and prove his case before the Tribunal, if another opportunity is given by the Tribunal so that he will be in a position to examine his Doctor as a witness for the purpose of proving that he sustained injuries as a result of an accident which is supported by the discharge summary and the accident register.

7. This court finds force in the submissions made by the learned counsel for the Appellant. Being a benevolent legislation, if the claim of the Appellant/claimant is a genuine one, he should not be deprived of compensation just

because he has not examined the Doctor as a witness before the Tribunal.

8. For the foregoing reasons, this Court is of the considered view that this is a fit case for remanding the matter to the Tribunal for fresh consideration.

9. In the result, the impugned judgment and decree dated 14.06.2011 passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court, Dharmapuri) in MCOP.No.85 of 2010 is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration and the Tribunal after giving sufficient opportunity to both the Appellant as well as the respondents to place appropriate evidence in respect of their respective contentions and also permitting them to file additional pleadings if so advised, shall pass final orders within a period of six months from the date of receipt of a copy of this Judgment.

10. With the aforesaid direction, this Appeal shall stand disposed of. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Judge and Fast Track Court,
Dharmapuri.

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

A.SK(06.01.2021)

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