

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3676 of 2011

Thulasidass

... Appellant/Claimant

Vs.

1.Baskar

2.Royal Sundaram Alliance Insurance Company Ltd.
No.31, Pattulal road
Chennai-2.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2011 made in M.C.O.P.No.219 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District.

For Appellant : Mr.PA.Sudesh Kumar

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed challenging the order of dismissal dated 27.09.2011 made in M.C.O.P.No.219 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District.

2.The appellant is the claimant in M.C.O.P.No.219 of 2006 on the file of Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.10.2005.

3.According to the appellant, on the date of accident i.e., on 22.10.2005 at about 5.00 p.m., one Naveenkumar rode the

motorcycle belonging to the 1st respondent, along with the appellant as a pillion rider from Ambur to Vellore, in a rash and negligent manner, dashed against the TATA chassis lorry, which was coming in the opposite direction and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and hence, the appellant filed the above said claim petition claiming compensation against the respondents.

4.The 2nd respondent/Insurance Company being insurer of the motorcycle filed counter statement denying the averments made in the claim petition and stated that the complaint was given by the rider of the motorcycle viz., Naveenkumar against the driver of TATA chassis lorry and the same was closed as the accident has occurred due to rash and negligent driving by the driver of the unknown vehicle and the vehicle was not traced. The said Naveenkumar died in another accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Ilangovan was examined as P.W.2 and marked sixteen documents as Exs.P1 to P16. On the side of the 2nd respondent/Insurance Company, one Mr.M.Vaitheeswaran, official of the 2nd respondent/Insurance Company was examined as R.W.1 and marked five documents as Exs.R1 to R5.

6.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the claim petition was not maintainable under Section 166 of the Motor Vehicles Act.

7.Against the said order of dismissal dated 27.09.2011 made in M.C.O.P.No.219 of 2006, the appellant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition relying on the contents of F.I.R., which was registered against the rider of the chassis lorry. The Tribunal failed to see that the rider of the motorcycle in which the appellant was travelling as a pillion rider, gave a complaint against the driver of the chassis lorry in order to escape from his liability and the complaint was given, when the appellant was in hospital. The Tribunal failed to see that F.I.R. was only to show that the accident has occurred and the same cannot be basis for fixing negligence. The Tribunal failed to see that the author of the complaint or the Police who recorded F.I.R. were not examined.

The Tribunal failed to consider that the rider of the motorcycle died subsequently in another accident, which would prove that he was habitual rider in a rash and negligent manner. The Tribunal failed to see that the appellant would not have made another complaint against the rider of the motorcycle as there cannot be two complaints in respect of the same accident. The Tribunal ought to have considered the evidence of the appellant as P.W.1 which is uncontroverted by the respondents, allowed the claim petition and prayed for setting aside the award of the Tribunal and for a direction to pay compensation to the appellant.

9. Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

10. The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions in support of the award passed by the Tribunal.

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 entire materials available on record.

12. From the materials available on record, it is seen that it is the contention of the appellant that while he was travelling as a pillion rider in the motorcycle, the rider of the motorcycle rode the vehicle in a rash and negligent manner, dashed against the chassis lorry and caused the accident. The appellant filed claim petition claiming compensation for the injuries. To substantiate his contention, the appellant examined himself as P.W.1 and deposed to that effect and marked F.I.R. as Ex.P1. On the other hand, it is the contention of the 2nd respondent/Insurance Company that the accident has occurred only due to rash and negligent driving by the driver of the unknown unregistered chassis lorry and not due to the rash and negligent riding by the rider of the motorcycle. To substantiate their contention, the 2nd respondent/Insurance Company examined one M.Vaitheeswaran, official from the Insurance Company and marked Exs.R1 to R5. Ex.R1 is certified copy of F.I.R., which is also marked as Ex.P1 and relied on by the appellant. Ex.R2 is final report, Exs.R3 and R4 are claim forms made by the 1st respondent, owner of the motorcycle and Ex.R5 is cover note.

13. From the award of the Tribunal, it is seen that the Tribunal considered the contents of F.I.R. which shows that the accident has occurred due to rash and negligent driving by the driver of unknown chassis lorry. Ex.R2 is final report filed by the Police stating that the accident has occurred due to rash

and negligent driving by the driver of the chassis lorry, the said lorry could not be traced and closed the F.I.R. From the materials on record, it is seen that the appellant has not given any objection to the contents of F.I.R. The contention of the learned counsel appearing for the appellant that the appellant could not lodge another complaint with regard to same accident is without merits. The appellant should have filed objection for the contents of F.I.R. stating that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle and followed it with higher authority, if the Police has not taken the objection. In addition to that, it is pertinent to note that in Ex.R3/claim form filed by the second respondent/Insurance Company, the 1st respondent has not stated that the accident has occurred only due to rash and negligent driving by the driver of the chassis lorry. The appellant relied on F.I.R. to substantiate his claim made in the claim petition and as P.W.1, contrary to the contents of F.I.R., he has deposed. The Tribunal has considered all the above materials in proper perspective and rightly dismissed the claim petition. There is no error in the award of the Tribunal warranting interference by this Court.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupathur, Vellore.

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

C.M.A.No.3676 of 2011

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srg 30/04/2021