

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2381 of 2013

Senthil Kumar

.. Appellant/Petitioner

Vs.

1.K.Chinnusamy

2.National Insurance Company Ltd.

No.74-A, Paramathi road

Namakkal Town.

.. Respondents/Respondents

(R1 was set exparte before the Tribunal
and hence, notice to R1 is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.08.2010 made in M.C.O.P.No.735 of 2005 on the file of Motor Accident Claims Tribunal, District and Sessions Court, (Fast Track Court), Namakkal.

For Appellant : Mr.A.Sathish Kumar
for Mr.C.Thangaraju

For R2 : Mr.S.Arunkumar

J U D G M E N T

This matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed challenging the order of dismissal dated 16.08.2010 made in M.C.O.P.No.735 of 2005 on the file of Motor Accident Claims Tribunal, District and Sessions Court, (Fast Track Court), Namakkal.

2.The appellant is the claimant in M.C.O.P.No.735 of 2005 on the file of Motor Accident Claims Tribunal, District and Sessions Court, (Fast Track Court), Namakkal. 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 01.11.2004.

3. According to the appellant, on the date of accident i.e., on 01.11.2004 at about 7.30 hours, while he was riding in his motorcycle bearing Registration No.TN-28/L-5956 at Paramathi road, Namakkal, opposite to Karur Vysya Bank, on the left side of the road, a TVS Suzuki motorcycle bearing Registration No.TN-28/C-0297 rode by the 1st respondent in a rash and negligent manner, hit behind the motorcycle of the appellant 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 1st respondent, owner-cum-rider of the motorcycle bearing Registration No.TN-28/C-0297, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company being insurer of the motorcycle bearing Registration No.TN-28/C-0297 filed counter statement denying the averments made in the claim petition and stated that the accident did not occur due to rash and negligent riding of the motorcycle by the 1st respondent. F.I.R. clearly shows that the accident is a hit and run case. There was a delay of 25 days in lodging the complaint. The appellant colluding with the 1st respondent foisted a false case for the purpose of getting compensation from the 2nd respondent. 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.

6. Before the Tribunal, the appellant examined himself as P.W.1, Dr.S.Mathivanan was examined as P.W.2, one Jayapaul, eye-witness to the accident was examined as P.W.3 and marked ten documents as Exs.P1 to P10. On the side of the 2nd respondent/Insurance Company, statement was marked as Ex.R1 and no oral evidence was let in. Identity card of P.W.3 was marked as Ex.W1.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the appellant has not proved that the accident occurred due to negligent riding of the motorcycle by the 1st respondent.

8. Against the said order of dismissal dated 16.08.2010 made in M.C.O.P.No.735 of 2005, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the 2nd respondent has not produced any document to show that the accident has not occurred as alleged by the appellant and motorcycle bearing Registration No.TN-28/C-0297 belonging to the 1st respondent was not involved in the accident, except relying on Ex.R1, the alleged statement given by the appellant stating that the accident has occurred while the motorcycle going in front of the appellant suddenly turned to the right side and the appellant dashed on the said motorcycle. The Tribunal failed to consider the evidence of P.W.1 and P.W.3, who deposed that the motorcycle belonging to the 1st respondent dashed on the back side of the appellant's motorcycle. The Tribunal erred in relying on Ex.P1/F.I.R., which was registered after the delay of 25 days. The Tribunal failed to consider that the respondents did not examine any independent witness much less the investigator. The Tribunal failed to see that the criminal proceedings are initiated against the 1st respondent, he pleaded guilty and paid fine. The 2nd respondent except stating that the vehicle of the 1st respondent was not involved in the accident, has not filed any document to substantiate the same. The Tribunal, in the absence of any evidence on behalf of the 2nd respondent, erroneously dismissed the claim petition and prayed for setting aside the award of the Tribunal and for a direction to pay compensation to the appellant.

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 on record.

12.From the materials available on record, it is seen that it is the contention of the appellant that while he was riding his motorcycle on 01.11.2004 at about 7.30 hours, the 1st respondent rode the motorcycle in a rash and negligent manner, dashed on the back side of the appellant's motorcycle and caused the accident. He was admitted in Government Hospital, Namakkal and subsequently, in Kamala Hospital, Salem and has taken treatment as in-patient for 20 days. To substantiate this contention, the appellant examined himself as P.W.1 and the eye-witness as P.W.3. P.W.3 in his evidence has deposed supporting the averments made in the claim petition. The appellant as P.W.1 in his cross-examination admitted that after the motorcycle dashed against his motorcycle, he fell down and he did not notice the number of the motorcycle which dashed against his motorcycle and the alleged rider of the motorcycle did not stop

and went away. Further, the appellant as P.W.1 has stated that his uncle who lodged the complaint did not come to the accident spot. The persons who were present in the accident spot admitted him in the hospital. The appellant as P.W.1 has also admitted that his uncle only gave a complaint to the Police after 25 days of the accident and averments in the claim petition are correct. The appellant also admitted that the official of the 2nd respondent enquired both the appellant as well as his uncle and both the appellant as well as his uncle gave the statement. He also admitted that he only wrote the statement and signed the same. He also wrote the statement of his uncle and his uncle signed the same. This statement was shown to him in the cross-examination. He admitted his signature in the statement, but denied that the accident occurred due to the vehicle going in front of him suddenly turned to his right side and dashed on the motorcycle.

13. On the other hand, P.W.3, eye-witness, in his evidence has stated that he was present when the accident occurred and the accident was due to rash and negligent riding of the motorcycle by the 1st respondent. According to P.W.3, after obtaining phone number of the appellant's uncle, he informed him about the accident. P.W.3 and another person took the appellant and admitted him in the Government Hospital, Namakkal. According to P.W.3, the 1st respondent was present till P.W.3 took the appellant to the hospital. This portion of the deposition is contrary to the admission of the appellant that the rider of the offending vehicle did not stop after the accident and he did not know the Registration number of the offending motorcycle. The statement of P.W.3 that the 1st respondent was present till he took the appellant to the hospital is contrary to the complaint given by the uncle of the appellant. In the complaint which was given by the uncle of the appellant after 25 days of the accident, it has been stated that Registration number of the motorcycle was not known to them. He has also stated that he went to the accident spot on receiving information. On the other hand, P.W.3 the alleged eye witness has stated that uncle of the appellant directly came to the hospital and he did not come to the accident spot. Further, P.W.3 has stated that the Police enquired him two days after the accident. From the materials on record, it is seen that the complaint was given only after 25 days from the date of accident and there is no explanation for the delay. The Tribunal considering the fact that the complaint was given only after 25 days, held that the deposition of P.W.3 that the Police enquired him within two days is not acceptable. The 2nd respondent has substantiated their contention by marking Ex.R1, the statement given by the appellant before the investigator. The appellant has not examined his uncle, who gave the complaint and the appellant has admitted that the statement in the complaint is true.

14.The Tribunal considering all the above materials, especially the contradiction in the evidence of PW.1 and P.W.3 and the complaint that unknown vehicle dashed against the appellant's motorcycle, held that the appellant failed to prove that the accident occurred due to involvement of the motorcycle belonging to the 1st respondent and dismissed the claim petition by giving cogent and valid reason. There is no error in the said finding of the Tribunal warranting interference by this Court.

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

Sd/-

Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The District and Sessions Judge
Motor Accident Claims Tribunal
(Fast Track Court), Namakkal.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.No.36543

+2cc to Mr.C.Thangaraju, Advocate SR.No.36682

सत्यमेव जयते

C.M.A.No.2381 of 2013

CNR (CO)

GMV (12/05/2021)

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