

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1471 of 2003

M.Srinivasan

.. Appellant/ Claimant

Vs.

1.Sudarsan

2.United India Insurance Company Limited,
38, Anna Salai,
Chennai - 600 006.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.09.2000 made in M.C.O.P.No.2502 of 1998 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.D.Nellaiappan

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 12.09.2000 made in M.C.O.P.No.2502 of 1998 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2502 of 1998 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.02.1997.

3.According to the appellant, on 11.02.1997 at about 06.00 P.M., while he was travelling as a pillion rider in a motorcycle bearing Registration No. TN 07 B 7326 belonging to the 1st respondent from North to South on the Dr.Durgabai Deshmuk road near Sathya Studio, the rider of the motorcycle rode the same in a rash and negligent manner and dashed against a cow and caused

the accident. Due to the said impact, the appellant fell down from the motorcycle and sustained fracture in his right leg. At the time of accident, the appellant was working as an Announcer in All India Radio, Chennai and was earning a sum of Rs.5,000/- per month. Due to the injuries and fracture sustained by him in the accident, the appellant has taken first aid treatment at Adayar Ortho Clinic, Adyar. Therefore, he filed the said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him against the respondents 1 and 2, being the owner and insurer of the motorcycle.

4.The 1st respondent-owner of the motorcycle remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company, being the insurer of the motorcycle filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent-Insurance Company, the accident did not take place as alleged by the appellant. Since the appellant being the pillion rider, ought to have requested the rider of the motorcycle to ride the same within the speed limit when the rider of the motorcycle was riding in a rash and negligent manner. The place of occurrence is a busy place and nobody can drive the vehicle in a rash and negligent manner. The rider of the motorcycle rode the same as per the rules and he did not sustain any injuries. Therefore, with a view to grab money from the 2nd respondent-Insurance Company, the claim petition has been filed. The appellant has to prove that he sustained injuries and disability due to the accident. The injuries and disability mentioned in the claim petition are exaggerated for the purpose of making huge claim. The Insurance Policy does not cover the pillion rider of the motorcycle and hence, the appellant is not entitled to any compensation. The appellant has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1, Dr.J.R.R.Thiagarajan was examined as P.W.2 and Sub-Inspector A.Pushparaj was examined as P.W.3 and 6 documents were marked as Exs.P1 to P6. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant has not proved the nature of accident.

8.Challenging the order of dismissal dated 12.09.2000 made in M.C.O.P.No.2502 of 1998 and for granting compensation, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the appellant was given first aid treatment in Adayar Ortho Clinic, Adyar. But, the appellant could not prove that he was admitted in the said clinic and took treatment. The appellant cannot be denied compensation for not filing Accident Register. The Tribunal erred in holding that the appellant in collusion with 1st respondent filed the claim petition. The 1st respondent pleaded guilty and paid fine. The Tribunal erroneously placed more reliance on the delay in lodging the complaint. The case records maintained in Andhra Mahila Sabha prove that he suffered injuries in the road traffic accident and prayed for setting aside the award of the Tribunal dismissing the claim petition and for granting compensation.

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

11.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12.It is the contention of the appellant that while he was travelling as a pillion rider in the motorcycle ridden by the 1st respondent, due to rash and negligent riding by the 1st respondent, he dashed against a cow and due to the impact, the appellant fell down and sustained injuries and fracture. To substantiate the said contention, the appellant examined himself as P.W.1 and marked Exs.P1 to P6. Ex.P6/F.I.R. was registered based on the complaint given by the appellant on 26.04.1997, belatedly after a period of 2 and 1/2 months from the date of accident. The appellant has not explained the delay in lodging the complaint. The appellant has not filed any other documents like Accident Register, discharge summary to prove that he sustained injuries in the road traffic accident except filing Ex.P1. Ex.P1 is the certificate issued by the Medical Practitioner. The Tribunal considered the said document and found that there was no mention that appellant sustained injuries in the road traffic accident.

13.The learned counsel appearing for the appellant now in the appeal raised grounds and contended that the case records in Andhra Mahila Sabha would show that the appellant sustained injuries in a road traffic accident. The appellant has not stated in the claim petition that he took treatment in Andhra Mahila Sabha for the injuries sustained by him in the road traffic accident and has also not filed any document before the Tribunal as well as before this Court. The contention of the learned counsel appearing for the appellant that the 1st

respondent pleaded guilty and paid fine will not prove that he sustained injuries in the road traffic accident. It is the case of the 2nd respondent-Insurance Company that the appellant and 1st respondent colluded together and made false claim for compensation from the 2nd respondent-Insurance Company. When such a stand is taken by the 2nd respondent-Insurance Company, it is for the appellant to prove by acceptable documentary evidence that accident has occurred due to involvement of the said vehicle and he sustained injuries in the road traffic accident. The appellant failed to prove that he sustained injuries in the road traffic accident due to rash and negligent riding by the 1st respondent. The Tribunal considered all the materials in proper perspective and dismissed the claim petition. There is no perversity in the reasoning and finding of the Tribunal warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 12.09.2000 made in M.C.O.P.No.2502 of 1998. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

1 cc to M/s.D. Nellaiappan, Advocate, Sr. 22573

C.M.A.No.1471 of 2003

CP (CO)
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