



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.25 of 2014

L.Dhanasekar (Minor)
(Represented by his father and next
friend C.Loga) ... Appellant/Petitioner

Vs.

1.N.Ranganathan

2.United India Insurance Co. Ltd.
A.R.Complex, II floor
1090, Poonamallee High Road
Chennai-84. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2013 made in M.C.O.P.No.3928 of 2008 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant	:	Mr.K.Varadha Kamaraj
For R1	:	No appearance
For R2	:	Mr.D.Bhaskaran

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 27.08.2013 made in M.C.O.P.No.3928 of 2008 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3928 of 2008 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. The minor represented by his father filed the said claim petition claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2008.



3. According to the appellant, on the date of accident i.e., on 09.03.2008 at about 9.00 hours, while he was travelling as a pillion rider in Hero Honda motorcycle bearing Registration No.TN-22-E-9015 belonging to the 1st respondent insured with the 2nd respondent/Insurance Company at R.P. Road, Hasthinapuram, the rider of Yamaha motorcycle bearing Registration No.TN-09-E-5989, hit the Hero Honda motorcycle in which the appellant travelled as a pillion rider and thus the accident has occurred. Due to the accident, the appellant sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the respondents.

4. The 1st respondent, owner of the Hero Honda motorcycle bearing Registration No.TN-22-E-9015, remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company, insurer of the Hero Honda motorcycle bearing Registration No.TN-22-E-9015 filed counter statement denying the averments made in the claim petition and stated that as per F.I.R., the offending vehicle was Yamaha motorcycle bearing Registration No.TN-09-E-5989 and not as alleged in the petition i.e. TN-OP-E-5989. The appellant has to prove that the rider of the Hero Honda motorcycle bearing Registration No.TN-22-E-9015 was in possession of driving license, the said motorcycle was duly insured with the 2nd respondent at the time of accident and the appellant was a third party. The 2nd respondent/Insurance Company has also denied the age, disability, nature of injuries and period of treatment taken by 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, one C.Loga, the father of the appellant examined himself as P.W.1 and marked seven documents as Exs.P1 to P7. 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.

8. Against the said order of dismissal dated 27.08.2013 made in M.C.O.P.No.3928 of 2008, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing entire negligence on the appellant instead of fixing entire negligence on the part of the rider of the Hero Honda motorcycle belonging to the 1st respondent. The Tribunal erred in dismissing the claim petition



on the ground that the rider of the Hero Honda motorcycle who lodged the complaint was not examined. The Tribunal ought to have fixed composite negligence on the part of both the riders of Hero Honda and Yamaha motorcycles. The Tribunal erred in relying on the contents of F.I.R., when the complainant was not examined to prove the same 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 and prayed for dismissal of the appeal.

11.Though notice has been 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.

12.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.

13.From the materials available on record, it is seen that in the claim petition, the appellant contended that while he was travelling as a pillion rider in Hero Honda motorcycle bearing Registration No.TN-22-E-9015, which was driven by one Jayachandran, at R.P. Road, Hasthinapuram, the rider of Yamaha motorcycle bearing Registration No.TN-09-E-5989 hit the Hero Honda motorcycle and caused the accident. In the accident, the appellant sustained injuries and rider of the Hero Honda motorcycle in which the appellant was travelling as a pillion rider lodged a complaint against the rider of the Yamaha motorcycle bearing Registration No.TN-09-E-5989. While so, the appellant filed the claim petition against the owner and insurer of the Hero Honda motorcycle bearing Registration No.TN-22-E-9015. Before the Tribunal, the father of the appellant as P.W.1 deposed that the appellant suffered injuries due to rash and negligent riding by the rider of the Hero Honda motorcycle bearing Registration No.TN-22-E-9015. The appellant marked F.I.R. as Ex.P1. In the F.I.R., it is seen that the accident has occurred only due to negligence on the part of the rider of the Yamaha motorcycle bearing Registration No.TN-09-E-5989. P.W.1, father of the appellant is not an eye-witness. He deposed contrary to the averments made in the claim petition and contents in the F.I.R. The appellant has not examined the rider of Hero Honda motorcycle bearing Registration No.TN-22-E-9015 or any eye-witness to prove their contention. The Tribunal considering all the above materials in proper perspective,



dismissed the claim petition by giving cogent and valid reason. There is no error in the said award of the Tribunal warranting interference by this Court.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.38008

C.M.A.No.25 of 2014

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