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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.576 of 2014

Gobi

... Appellant

Vs.

1. Loganathan

2. United India Insurance Co., Ltd.,
146-N, West Car Street,
Tiruchengode,
Namakkal District

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed by the Motor Accident Claims Tribunal, Tiruchengode in M.C.O.P.No.146 of 2008 dated 12.09.2012.

For Appellant : Mr.C.Kulanthaivel

For Respondents: Mr.S.Arunkumar for R2
R1 - NA

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed seeking to set aside the award passed by the Motor Accident Claims Tribunal, Tiruchengode in M.C.O.P.No.146 of 2008 dated 12.09.2012.

2. The case of the appellant / claimant is that while he was proceeding in the unit lorry as a cleaner from Fata to Takali in the State of Maharashtra, at that time, the driver of the lorry had driven the vehicle in a rash and negligent manner and upset the lorry, due to the said impact, the appellant fell down on the ground and sustained injuries in his right fore arm and right femur and all over the body. At the time of accident, the appellant was 20 years old and was earning Rs.5,000/- per month, as salary. Since the 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the vehicle,



the appellant has claimed compensation of Rs.2,00,000/- against them. In respect of the accident, a case in Crime No.10 of 2004 was registered under Sections 279 and 338 IPC against the driver of the lorry.

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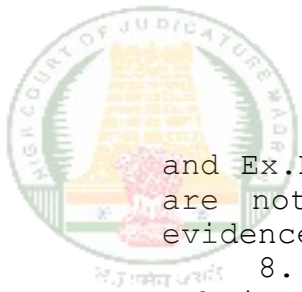
3. Per contra, the 2nd respondent / Insurance Company has filed a counter denying all the averments stated in the claim petition. It is further stated in the counter that the appellant has not at all travelled as a cleaner in the vehicle and the 1st respondent is the relative of the appellant, which is evident from the evidence of the mother of the appellant. With the help of the 1st respondent, the FIR has been filed against the vehicle by one Rajasekaran on 24.04.2004 in Kaij Police Station, which is nearly a month later from the accident. Therefore, the 2nd respondent/Insurance Company stated that they are not liable to pay compensation and sought to dismiss the claim petition.

4. The Tribunal considering the pleadings, averments, counter averments, witnesses and evidences produced on record, had dismissed the claim petition. Aggrieved against the same, the appellant / claimant has approached this Court.

5. The learned counsel for the appellant submits that the Tribunal erred in dismissing the claim of the appellant on the ground that the delay of one month in registering the FIR would make a strong doubt in the involvement of vehicle during the accident, as there was no other documents such as observation mahazer, rough sketch, motor vehicles' inspector's reports and charge sheet and judgment from the court below if any, to prove the accident and further, there was contradiction in the FIR about the name of the appellant and the same was not clarified by the Tribunal.

6. The learned counsel for the appellant also submits that the Tribunal failed to consider the factual aspect that the accident happened in the State of Maharashtra and the claimant sustained grievous injuries and immediately admitted in the nearby hospital and since there are no relatives to take care the claimant, he shifted to Coimbatore. The Ex.P.4, discharge summary cum injury certificate issued at the hospital at Maharashtra has not been properly considered by the Tribunal. Therefore, the delay in FIR is not fatal to the claim, he pleaded.

7. The learned counsel for the appellant further contended that the Tribunal failed to take into consideration that the name of the claimant mentioned as 'Bobi' instead of Gobi in the FIR, may be a typing mistake or a misunderstanding of the pronunciation due to language problem. The evidence of R.W.1



and Ex.R1 are self interested for the Insurance company and they are not supported or corroborated by any other documents or evidences.

8. The learned counsel for the appellant in support of his submissions relied on the following citations:-

a. Judgment of the Hon'ble Supreme Court reported in 2011 (1) TN MAC 326 (SC) [Ravi V. Badrinarayan and others]

b. Judgment of this Court reported in 2018(2) TN MAC 532 [New India Assurance Co., Ltd., V. Amalathasi and others].

c. Judgment of this Court reported in 2013 (1) TN MAC 858 [National Insurance Co., Ltd., V. Malliga and another]

d. Judgment of the High Court of Calcutta reported in 2018 (2) TN MAC 691 (DB) (Cal.) [Bajaj Allianz General Insurance Co., Ltd., V. Anjali Moondal and others]

e. Judgment of this Court reported in 2017 (2) TN MAC 496 (DB) [Tamilnadu State Transport Corporation V. P.Shanthi and others]

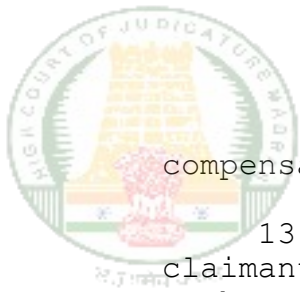
f. Judgment of this Court reported in 2015(2) TN MAC 485 (DB) [The Managing Director, Tamilnadu State Transport Corporation V. Eswari and others].

9. The learned counsel for the 2nd respondent / Insurance company submitted that the Tribunal by considering all the materials available on record, had dismissed the claim petition and the same does not require any interference by this Court, thereby pleaded to confirm the award passed by the Tribunal.

10. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the documents placed on record. Though notice was served on the 1st respondent, there is no representation for him either-in-person or through learned counsel.

11. Before the Tribunal, the appellant was examined himself as P.W.1 and Doctor was examined as P.W.2 and Exhibits, Ex.P.1 to P.8 were marked and on behalf of the respondent, R.W.1 was examined and Ex.R.1 and R.2 were marked.

12. Though there is one month delay in lodging complaint and registering FIR with regard to the accident, the Hon'ble Supreme Court in the judgment cited supra has held that 'delay in lodging FIR cannot be a ground to deny justice to victim. Authenticity of FIR assumes much more significance than delay in lodging thereof', therefore, this Court being bound by the said Judgment, is of the view that dismissing the claim petition on the said ground needs interference. Moreover, from the evidence of P.W.1 and Ex.P.1, FIR, it is clear that the accident had happened only due to the negligence on the part of the driver of the lorry, therefore, the driver, owner and insurer of the offending vehicle, cannot just wash away their hands from paying



compensation to the injured.

13. That apart, the Tribunal held that the name of the claimant and the name mentioned in the FIR does not tally with each other and that there is an error, cannot be accepted, because it is very well open to the appellant as well as the Tribunal and the Insurance Company to confirm or to controvert the same by examining the translator and when the same has not been done, the liability cannot be fixed on the claimant alone.

14. The contention of the appellant that the accident happened in the State of Maharashtra and since there were no other relatives to take care of him and that there was a language problem, he was shifted to hospital at Coimbatore, seems to be genuine reason, acceptable one and the same is clear from Ex.P.4, Discharge summary cum injury certificate.

15. That apart, from Ex.P.6, discharge summary, it is seen that 'L-Plating Bone grafting done' hence, the appellant would have suffered grievous injuries and pain and sufferings. Further, a person would have assisted him to carryout even his day today activities, but the Tribunal erred in dismissing the claim petition, which also in the considered opinion of this Court needs interference.

16. In view of the above said detailed qualitative discussions, this Court is inclined to remand the matter to the Motor Accident Claims Tribunal, Tiruchengode to consider the matter afresh on merits and in accordance with law [without being influenced by any of the observations made by this Court as well as by their earlier observations] as expeditiously as possible. It is needless for this Court to make a pertinent mention that the parties shall extend their co-operation without fail.

Accordingly, the present Civil Miscellaneous Appeal is disposed of. No costs and the order passed by the Motor Accident Claims Tribunal, Tiruchengode in M.C.O.P.No.146 of 2008 dated 12.09.2012 is set aside.

Sd/-

Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

ssd



To

1. The Motor Accident Claims Tribunal
Tiruchengode.

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

C.M.A.No.576 of 2014

BP (CO)
CT (07/04/2022)