

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.761 of 2014

S.Nambiraj ... Appellant/Petitioner
Vs.

1. S.Murugan,
2. Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, 4th Floor,
College Road,
Chennai - 600 006. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 26.08.2013 made in M.C.O.P.No.3118 of 2010 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.S.Parthasarathy

For R2 : Mr.S.Arunkumar

R1 - Served - No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 26.08.2013 made in M.C.O.P.No.3118 of 2010 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2. The case of the appellant is that on 23.11.2009 at about 05.30 a.m., the appellant was traveling in a Car bearing Registration No.TN-07-T-1425 from Madurai to Chennai at GST Road, near Ulundurpet Tollgate. At that time, the driver of the Car driven the car in a rash and negligent manner and dashed against the first respondent's lorry bearing Registration No.TN-30-AC-7266 which was parked on the side of the road. As a result, the appellant sustained grievous injuries and immediately he was admitted for treatment in Government General Hospital, Villupuram. At the time of accident, he was aged 19, and before the accident, he was a Mason and was earning Rs.10,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition before the Motor Accident

Claims Tribunal, VI Small Causes Court, Chennai, claiming Rs.6,00,000/- as compensation under various heads.

3. The second respondent insurance company filed a counter affidavit before the Tribunal stating that the lorry bearing Registration No.TN-30-AC-7266 was parked in the middle of the road without any parking light, therefore, the accident was occurred. Further, it has been stated that the driver of the first respondent had no valid driving licence and the first respondent had no valid insurance policy at the time of accident. Hence, they were not liable for the claim. Moreover, it has been stated that the alleged age, occupation, income and disability were not true and the amount of compensation claimed was highly excessive.

4. During the trial, on the side of the appellant, one Thiru.Kesava Pillai was examined as PW1, one Thiru.Saravanabhavan was examined as PW2 and Exs.P1 to P4 were marked. On the side of the respondents, one Thiru.Kesava Pillai was examined as RW1, one Thiru.Saravanabhavan was examined as RW2 and Exs.R1 to R8 were marked.

5. The Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, dismissed the petition as against the appellant. Aggrieved by the same, the appellant has filed this appeal before this Court.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent, and perused the materials available on record.

7. On perusal of the award dated 26.08.2013 passed by the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, it is observed that the appellant has examined himself as PW1 and narrated the facts that how the accident was happened and how he had sustained injuries. Also he has filed Ex.P1 F.I.R. Copy and Ex.P2 Discharge Summary issued in the Government Hospital, in support of his evidence. On the other hand, the learned counsel for the second respondent has contended that they came to know about the RTO inspection of the Car which was involved in the accident. It was revealed that the chasis number of the said vehicle differs from that of the vehicle which was insured with them. Also, she has contended that till date, the alleged vehicle was not claimed by anyone as its owner and the same was lying in the custody of the police. Moreover, she has contended that the appellant who had stated that the driver of the Motorcar, i.e. Stephen Raj, is his brother and the said car belongs to the friend of his brother. Nobody had taken steps to produce the original Registration Certificate to recover the alleged vehicle, hence the said FIR was closed under Section 468 of Cr.P.C. Therefore, she has contended that they are not liable to indemnify the appellant.

8. In support of her contention, she has examined two witnesses, namely, Thiru.Kesava Pillai (RW1) and Thiru.Saravanabhavan (RW2), and both of the witnesses have corroborated her version that the chasis number found in the alleged vehicle differs from that of the vehicle insured with the second respondent. The appellant has not given any explanation before the Tribunal with regard to mismatching of chasis number. Also the vehicle which was involved in the accident has not been claimed by anyone by producing necessary documents and the same was lying in the custody of the police during the trial. The appellant has not placed any single evidence before the Tribunal to prove that the vehicle involved in the accident was the one actually insured with the second respondent, therefore, his claim was rejected and his petition was dismissed by the Tribunal. Even before this Court, he has not placed any evidence regarding the mismatches of the chasis number stated above. So, in the absence of any evidence, this Court is not inclined to interfere with the order of the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

raja

To

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

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

C.M.A.No.761 of 2014

PVS (CO)
GN(19/11/2020)