

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2686 of 2017

Sudhakar

.. Appellant/Claimant

Vs.

1.Rukhia Bai

2.United India Insurance Company Ltd.

Third party cell

73, C.D.H. road

Ambattur, Chennai-600 053.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2015 made in M.C.O.P.No.492 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tiruvallur.

For Appellant : Mr.N.Prakash for
Mr.Govind Chandrasekhar

For R1 : No appearance

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 16.10.2015 made in M.C.O.P.No.492 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tiruvallur.

2.The appellant is claimant in M.C.O.P.No.492 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tiruvallur. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.01.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence let in by the appellant, dismissed the

claim petition holding that the appellant has not proved that the accident has occurred due to rash and negligent driving by the driver of the tempo traveller belonging to the 1st respondent.

4. Against the order of dismissal dated 16.10.2015 made in M.C.O.P.No.492 of 2015, the appellant has come out the present appeal.

5. The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to properly appreciate Ex.P1/F.I.R., Exs.P3 & P4/discharge summaries and Ex.P5/final report. These documents would clearly establish that the accident has occurred due to rash and negligent driving by the driver of the 1st respondent. The Tribunal has to decide whether the appellant was hit by the offending vehicle, whether the offending vehicle was properly identified and whether the appellant sustained injuries in the accident occurred due to rash and negligent driving by the driver of the offending vehicle belonging to the 1st respondent. These facts were established by the appellant by marking Exs.P1, P3 to P5. The description of the accident as 4.15 a.m. cannot be held against the appellant in the light of the overwhelming evidence available on record to establish the occurrence of the accident. The Motor Vehicles Act is beneficial legislation and the same cannot be defeated due to technical pleas. The finding of the Tribunal that the accident would have occurred only at 4.15 a.m. and not 16.15 hours is erroneous. The Police after investigation have identified the accident and involvement of the offending vehicle. The Tribunal without properly appreciating the documents, erroneously dismissed the claim petition and prayed for allowing the appeal and granting compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that Exs.P3 and P4/discharge summaries clearly establish that the appellant fell down from the motorcycle and sustained injuries. Only with a view to get huge compensation, the appellant has falsely implicated the vehicle belonging to the 1st respondent. The Tribunal appreciating both oral and documentary evidence, dismissed the claim petition by giving valid reason and prayed for dismissal of the appeal.

7. Though notice was 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.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

9. From the materials available on record, it is seen that the appellant, on 12.01.2008 at 4.15 a.m., while he was riding in his motorcycle bearing Registration No.TN-20 AF 3672, the tempo traveller belonging to the 1st respondent, driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained injuries and took treatment on the same day. He has filed Exs.P3 and P4/ discharge summaries to prove the injuries, wherein it has been mentioned that the appellant fell down from the two wheeler on 12.01.2008 at 4.30 p.m. at Tiruvallur, sustained laceration on left eye lid 5 X 3 c.m., swelling on his right wrist, distal shaft of ulna and distal radius. In Ex.P3, the date of admission is mentioned as 12.01.2008 and date of discharge is on 13.01.2008. Whereas in Ex.P4, date of admission is mentioned as 12.01.2008 and date of discharge is on 17.01.2008. He was advised to attend ortho as out-patient after three weeks on Saturday. A perusal of Ex.P2/Accident Register copy reveals that there is an insertion that two wheeler and tempo traveller are involved in the accident. The Police investigated the complaint lodged by the brother of the appellant. In Ex.P1/F.I.R., it has been mentioned that the accident has occurred only in the morning on 12.01.2008, the appellant took his first aid at Government Hospital, Tiruvallur, then he was taken to the Government Hospital, Chennai and admitted in I.C.U. No discharge summary from the Government Hospital, Chennai, was filed. The Police after investigation, have filed charge sheet that the accident has occurred on 12.01.2008 at 16.15 hours. The appellant as P.W.1 in his cross-examination has deposed that the accident has occurred only at 4.15 a.m. The Tribunal considering all the above oral and documentary evidence and failure on the part of the appellant to produce Motor Vehicle Inspector's Report to show the damages to the offending vehicle, held that the appellant failed to prove the manner of accident and further held that the accident has not occurred due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent and dismissed the claim petition. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

10. For the above reasons, the Civil Miscellaneous Appeal stands dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Special Subordinate Judge
The Motor Accident Claims Tribunal
Tiruvallur.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.D.Bhaskaran, Advocate sr 4949

+1 CC to Mr. Govind Chandrasekhar, Advocate sr 5176.

C.M.A.No.2686 of 2017

JP(CO)
SP(10/11/2020)



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