

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2809 of 2017

S.Sekar

... Appellant/Petitioner

Vs.

1.Mayilvahanan

2.United India Insurance Co. Ltd.

Andiappa Gramani street

Rayapuram

Chennai-17.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2017 made in M.C.O.P.No.813 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

For Appellant : Mr.S.Udhayakumar

For R2 : Mr.S.Arunkumar

R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 04.01.2017 made in M.C.O.P.No.813 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellant is claimant in M.C.O.P.No.813 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. He filed the said claim petition claiming a sum of Rs.2,25,000/- as compensation for the injuries sustained by him in the accident that took place on 25.02.2007.

3.According to the appellant, on the date of accident, i.e., on 25.02.2007 at about 9.15 p.m., the appellant travelled as passenger in an auto from Chennai to Nemilikuppam and while the appellant was standing in Nemilikuppam village bus stop, the driver of the auto belonging to the 1st respondent, which came

from Mahabalipuram to Chennai, drove the same in a rash and negligent manner, dashed against the appellant and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and hence, he filed the claim petition claiming compensation against the respondents.

4.The 1st respondent, owner of the auto, remained exparte before the Tribunal.

5.The 2nd respondent filed counter statement denying the averments made in the claim petition and stated that the appellant travelled as passenger in some other auto and registration number of the said auto was not disclosed in the claim petition. The driver of the auto belonging to the 1st respondent drove the same with care and caution and he is no way connected with the accident. The driver of the auto did not possess driving license and the auto is not insured with the 2nd respondent at the time of accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellant. The 2nd respondent has also denied the age, avocation and income of 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, the appellant examined himself as P.W.1 and one Dr.K.J.Mathiazhagan as P.W.2 and marked thirteen documents as Exs.P1 to P13. The respondents did not let in any oral and documentary evidence.

7.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 he sustained injuries either due to the accident by motor vehicle or by any usage of motor vehicle.

8.Against the order of dismissal dated 04.01.2017 made in M.C.O.P.No.813 of 2009, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant/claimant contended that after the accident, the friend of the appellant took him to the hospital and he failed to mention as to how the accident has occurred. Non-mentioning the manner of accident will not be a fatal to the case of the appellant for claiming compensation. Some doctors do not mention the nature of injuries in the Accident Register copy. After the accident, the appellant was unconscious, admitted in the hospital and hence, the

complaint could not be lodged in time. The delay in lodging complaint is not fatal to the case of the appellant. The Tribunal failed to note that the appellant, who stood in Nemilikuppam Village bus stop was waiting for a vehicle to go to his house. At that time, the auto belonging to the 1st respondent dashed against him and caused the accident. The appellant has specifically mentioned the registration number of the offending auto. The Tribunal ought to have awarded compensation atleast by fixing contributory negligence on the part of the appellant and prayed for setting aside the award of the Tribunal and granting compensation.

10. The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

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

12. From the materials available on record, it is seen that the appellant has claimed compensation for the injuries sustained by him in the alleged accident that occurred on 25.02.2007. According to the appellant, while he was waiting in Nemilikuppam village bus stop at about 9.15 p.m. for the vehicle to go to his house, the offending auto belonging to the 1st respondent dashed on the appellant and caused the accident. In the accident, the appellant suffered injuries all over the body. His friend took him to the hospital and failed to mention the manner of the accident. In the Accident Register copy marked as Ex.P2, it has been stated that the appellant was smelling alcohol and was unconscious and nothing has been mentioned that the appellant sustained injuries due to dashing of auto against him. The complaint was given after 18 days of the accident by his friend and there is no explanation in the complaint for the delay. Further, the friend who admitted the appellant in the hospital ought to have informed to the duty doctor that the appellant suffered injuries in the accident. If his friend had mentioned so, the duty doctor would have informed the police and F.I.R. would have been registered. The appellant did not examine his friend who admitted him in the hospital and also the friend who lodged the complaint. The Tribunal appreciating all the above materials in proper perspective, dismissed the claim petition. There is no error in the said finding of the Tribunal warranting interference by this Court.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj

To

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

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

+1cc to Mr.Arunkumar, Advocate Sr.14385
+1cc to Mr.S.Udayakumar, Advocate Sr.13404

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