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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1887 of 2013

Paranthaman

...Appellant/Claimant

..Vs..

1. T.S.Selvakumar

2. The Manager,

United India Insurance Company Ltd.,

73-C, M.T.H. Road, 1st Floor,

Ambattur, Chennai - 600 053.

...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 31.12.2012 made in M.C.O.P.No.217 of 2010 on the file of Chief Judicial Magistrate Court (Motor Accidents Claims Tribunal), Tiruvallur.

For Appellant : Mrs.A.Sulochana

For Respondent No.2 : Mrs.Vijayakamala

For Respondent No.1 : Notice unserved

JUDGMENT

Challenging the dismissal of the claim petition, by the Motor Accident Claims Tribunal, Tiruvallur, by order, dated 31.12.2012 passed in M.C.O.P.No.217 of 2010, the claimant is before this Court to set aside the said order.

2. It is the case of the claimant that on 22.10.2007 at about 2.40 p.m., while the claimant was riding his motorcycle bearing registration No.TN 22 AS 9188 to his extreme left side of the road near Vadamadurai Pettaimedu, the driver of the Sundaram bus bearing registration No.TN 20 H 5567 belonging to the first



respondent was driven in a rash and negligent manner and hit against the claimant, thereby caused accident, resulting in the claimant/appellant sustained grievous injuries. In spite of treatment, the appellant had become permanently disabled due to the accident and he is not able to do his work as he did earlier. Hence, the appellant has filed a claim petition claiming Rs.6,68,000/- from the respondents and restricted his claim to Rs.5,00,000/- The first respondent being a owner of the vehicle and the second respondent as Insurer are jointly and severally liable to pay compensation.

3. In the counter statement filed by the second respondent/ Insurance Company wherein it is specifically stated that the appellant was under the influence of alcohol and drowsy mood and the second respondent/Insurance Company also denied that the appellant was having valid driving licence to drive the vehicle at the time of accident. As such, the appellant himself contributed to the accident. Therefore, the claim petition is liable to be dismissed.

4. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.7 and M.O.1 X-ray, particularly Ex.P3 report of the Motor Vehicle Inspector and considering the fact that the appellant had no driving licence and he was under the influence of alcohol at the time of accident. Further, the F.I.R. itself was lodged four days after the date of accident and therefore, the tribunal dismissed the claim petition.

5. Heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

6. The contention of the learned counsel appearing for the appellant/claimant is that the tribunal failed to appreciate the fact that the bus involved in the accident is the cause for accident and the first respondent driven the bus in a rash and negligent manner causing accident. Even for the sake of argument, the appellant consumed alcohol, the tribunal ought to have passed the award in favour of the appellant, taking note of the contributory negligence on the part of the appellant. Rejecting the entire claim in toto is totally unfair and



unfounded. Therefore, the award passed by the tribunal is liable to be set aside.

7. The learned counsel appearing for the second respondent/ Insurance Company has contended that the appellant was a minor at the time of accident and no valid driving licence was produced by the appellant before the tribunal. Further, the accident was not caused due to rash and negligent driving on the part of the first respondent vehicle. Ex.P5 discharge summary would disclose that the accident was occurred on account of the appellant himself fallen from the motorcycle as he consumed alcohol at the time of driving motorcycle. Therefore, the tribunal has rightly dismissed the claim petition.

8. Firstly, according to the learned counsel appearing for the second respondent/ Insurance Company, the occurrence of accident itself is questionable. Considering the genuineness of the accident, F.I.R. was lodged before the police after four days of the alleged accident. There is no explanation for the delay in filing F.I.R. before the police. Ex.P3 report of the Motor Vehicle Inspector disclose that there is no peeling of paint on the body of the bus or scratch on the body of the bus or there is any damage on the body of the bus. The aforesaid report creates doubt as to whether the accident occurred as alleged by the appellant. The appellant failed to satisfy this Court that the vehicle in question involved in the accident on that day. Secondly, on perusal of Ex.P5 discharge summary, it disclose that the 'plaintiff alleged to have fallen from the bike while he was under the influence of alcohol. The discharge summary issued by the Doctor was not disproved by the appellant before the tribunal. Thirdly, insofar as the driving licence to drive the vehicle, the appellant, aged 17 years has not produced valid driving licence before the tribunal. Therefore, the appellant has not proved before the tribunal that the accident was occurred due to rash and negligent on the part of the first respondent. Tribunal by considering the judgment of this Court, rightly rejected the claim petition.

9. For the reasons stated in preceding paragraphs, this Court is of the view that the tribunal has rightly dismissed the claim petition. Hence, there is no warrant to interfere with the award passed by the tribunal.



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10. In fine, the Civil Miscellaneous Appeal is dismissed.
No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
The Chief Judicial Magistrate Court
(Motor Accidents Claims Tribunal),
Thiruvallur
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

Civil Miscellaneous Appeal
No.1887 of 2013

BR(CO)
SB(08/09/2021)