



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.608 of 2012

Elumalai

... Appellant/Claimant

Vs.

1. M.S.Jahir Hussain

2. United India Insurance Com. Ltd.,
Villupuram.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 15.09.2011 passed in MCOP No.275 of 2006 by the Motor Accident claims Tribunal, I Additional Subordinate Judge, Villupuram.

For Appellant : Mr.T.Dhanyakumar

For second Respondent : Mrs.R.Ratna Thara

For first respondent : No appearance

J U D G M E N T

Aggrieved over the Award passed by the Tribunal by dismissing the claim petition in MCOP No.275 of 2006 the claimant/appellant is before this court seeking restricted compensation of Rs.2,00,000/-.

2. The claimant/appellant had filed a claim petition seeking compensation of Rs.5,00,000/- before the Tribunal for the injuries sustained by him in a road accident that took place on 26.01.2006.



3. The brief case of the claimant is as follows. On 26.01.2006 at 5.30 p.m., the petitioner was working as a load man in a dipper lorry bearing registration No.TN-32-C9599 and while the driver unloaded the materials near Melvazhi in Kunniur-Thimmalai Road, the claimant asked to the driver to pull down the dipper, but the driver instead of pulling down, raised the dipper, thereby the claimant, who was holding the back door of the dipper lorry, sustained grievous injuries all over the body. According to the claimant, the cause of accident is due to the rash and negligent act of the driver of the dipper lorry and since the first respondent insured his dipper lorry with the second respondent insurance company, both of them are liable to pay compensation to the claimant.

4. The second respondent resisted the claim petition.

5. Before Tribunal, on the side of the claimant/appellant, the claimant and Dr.Ravindran were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P11 were marked. On the side of the second respondent no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has dismissed the claim petition filed by the claimant. Hence this appeal.

7. Now the point for consideration is whether the order passed by the Tribunal has to be set aside or not?

8. The learned counsel appearing for the appellant submitted that the claimant had produced various documents before the Tribunal to establish the negligence on the part of the driver of the dipper lorry, however, the Tribunal has not considered the oral and documentary evidence adduced by the claimant and erroneously dismissed the claim petition. Hence, he prayed to set aside the order passed by the Tribunal and to award a compensation of Rs.2,00,000/- to the claimant.

9. The learned counsel appearing for the second respondent submitted that the petitioner has not established the negligence on the part of the driver of the dipper lorry before the Tribunal and since the negligence on the part of the driver is disputed, the claim petition before the Tribunal is not maintainable and the claimant has to seek remedy before the Deputy Commissioner of Labour (3) under the Employees Compensation Act. She further submitted that unless the claimant produced the documentary evidence to prove the negligence on the part of the driver of the dipper lorry before the Court below, is not entitled to file a claim petition under Section



166 of the Motor Vehicles Act, under the purview of the Motor Accidents Claims Tribunal and hence the Tribunal has rightly rejected the claim of the claimant/appellant.

10. A perusal of the orders passed by the Tribunal reveals that there is no discussion either on the documents marked before the Tribunal or on the arguments advanced by the counsel for the claimant. The Tribunal has not also discussed about the issues involved in the claim petition under Section 166 of the Motor Vehicles Act. Therefore, this court is of the view that in the interest of justice, the orders passed by the Tribunal is liable to be set aside and the Tribunal shall consider the claim petition afresh on merits, in accordance with law, including the maintainability of the claim petition.

11. In the result, the orders passed by the Tribunal is set aside and the claim petition is remitted back to the Tribunal to consider afresh by taking note of the issues involved in the claim petition, including the maintainability of the petition under Section 166 of the Motor Vehicles Act and pass orders in accordance with law, within a period of four months from the date of receipt of a copy of this order. Both the parties are at liberty to raise all the grounds before the Tribunal.

12. With the above observation, this civil miscellaneous petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

mst

To

The I Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Villupuram.

CMA.No.608 of 2012

CP(CO)
RLP(08/09/2021)