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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2021

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THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.3201 OF 2019

B.Ramamoorthy

...Appellant/
Petitioner

Versus

1. Akbar

2. M/s.United India Insurance Co. Ltd.,
No.134, Sillingi Buildings,
Greams Road, Chennai 6.

...Respondents/
Respondents

(1st Respondent exparte in Lower Court)

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 19.09.2018 made in MCOP.No.1741 of 2016 on the file of Motor Accident Claims Tribunal/II Small Causes Court, Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondents
for R2 : Mr.M.J.Vijayaraghavan

J U D G M E N T

The appeal is heard through video conferencing.

2. Challenging the order dated 19.09.2018 passed by the Motor Accident Claims Tribunal/II Small Causes Court, Chennai in MCOP.No.1741 of 2016, the present appeal has been filed by the claimant.

3. It is the case of the appellant/claimant that on 11.03.2010 at about 11.45 hours, he was travelling in a Motor Cycle bearing Registration No.TN-22-BW-5341 as a pillion rider



and one Akbar/first respondent drove the said Motor Cycle on the Thuraipakkam to Medavakkam Road. While they were going in front of the Panchayat Office on Eri Kari Road, Perumbakkam, the driver drove the said Motor Cycle in a rash and negligent manner and suddenly applied brake, as a result of which, the claimant was thrown out of the vehicle and he sustained fracture on the right ankle, injuries on the hands and legs, head and face and multiple external and internal injuries all over the body.

4. It is the further case of the claimant that he was working as a Maintenance Engineer at Mayajaal and earning a sum of Rs.28,000/- per month. Due to the accident, the claimant sustained grievous injuries and hence, he made a claim for a sum of Rs.20,00,000/- as compensation.

5. The said claim petition was resisted by the second respondent/Insurance Company by filing a detailed counter statement denying the manner of accident as projected by the claimants in the claim petition. They also denied the age, occupation and income of the claimant. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim before the Tribunal, the claimant examined himself as PW1, besides examining one Murugan as PW2 and marked Exs.P1 to P11. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that this is not a case of accident and it is only an accidental fall, which the claimant converted into a claim petition. Hence, the claimant is not entitled for any compensation. Further, the second respondent/Insurance Company is liable to recover the cost of proceedings from the claimant. Accordingly, the Tribunal dismissed the claim petition.

8. The main contention of the learned counsel for the appellant is that the said Akbar drove the Motor Cycle bearing Registration No.TN-22-BW-5341 in a rash and negligent manner and suddenly applied brake, as a result of which, the claimant sustained grievous injuries and the FIR also been registered against the said Akbar. Further, the Tribunal by relying on Ex.P2 A.R.Copy and Ex.P4 O.P. Record came to the conclusion that the claimant is not a pillion rider. But those exhibits were not marked by the authenticated persons and they were also not examined. Hence, those exhibits cannot be relied upon. Therefore, the learned counsel seeks to allow the claim petition.

9. Per contra, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal.



10. Heard both sides and perused the materials available on record.

11. Though FIR has been registered against Akbar, we cannot come to the conclusion that he is the driver of the Motor Cycle. Since FIR is not an encyclopedia, it is only a primary piece of document to show the cause of the accident and it need not contain the entire facts.

12. Further, the claimant had given various timings for the said accident. In Ex.P1, FIR, it was stated that the occurrence was said to have taken place at 11.00 clock, whereas in the claim petition, it has been mentioned 1.45 hours. In Ex.P2 AR Copy, the time of occurrence was stated as 11.15 p.m. and in Ex.P4 O.P. Record of Chettinadu Hospital, the occurrence time was mentioned as 11.30 p.m. The above facts shows that the claimant had given various timings at different places with regard to the time of occurrence.

13. In Ex.P2 A.R.Copy, it is noted as "Alleged H/O RTA riding on a bike" and in the Ex.P4, O.P. Record it is noted as "..... alleges H/O RTA skid and fall from bike near Perumbakkam at around 11.30 p.m. referred from Global Hospital". The same were recorded immediately after the alleged accident, and from that it is clear that the claimant was not a pillion rider, but he was the rider of the bike. Those exhibits were not disputed by the claimant. The claimant has accepted it and has relied upon them and therefore, he cannot deny or dispute the contents of those documents now. Thus, the Tribunal has rightly rejected the contention of the claimant.

14. Further, the claimant claimed that his friend/ first respondent herein was riding the said vehicle and he was sitting on the back seat when the accident occurred. If so, then the first respondent also should have sustained injuries. If he had not sustained injury, he would have admitted the claimant in the Hospital. However, the claimant's friend one Suresh admitted the claimant in the Hospital.

15. Further, the claim petition was also filed in the year 2016 for the accident that had occurred in the year 2010, i.e., after six years from the date of accident and no proper reason was given for such delay in filing the claim petition.



16. In the afore stated circumstances, this Court finds that the Tribunal has passed a well-justified award and the same does not require any interference by this Court. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award under challenge is confirmed. No costs.

Sd/-
Deputy Registrar (Admin III)

//True Copy//

Sub Assistant Registrar

pvs

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.35158

C.M.A.No.3201 of 2019

GPL (CO)
CS/17/11/2021