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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.2348 of 2019

Yesuraja

...Appellant/Claimant

Vs

1.Srinivasan

2.The Divisional Manager,
M/S. United India Insurance Company Limited.
P.K.S. Complex Katpadi Road,
Vellore.

...Respondents/Respondents.

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and final order in M.C.O.P.117/2013 on the file of the MACT, Chief Judicial Magistrate, Vellore, dated 08-01-2019.

For Petitioner : Mr.M.R.Thangavel

For Respondents : Mr.M.J.Vijayaraghavan [R2]
No Appearance [R1]

JUDGEMENT

The claimant has challenged the dismissal of the claim petition passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Vellore). The facts, in brief, are as follows:

2. The claimant aged 20 years on the date of the filing of the claim petition had sustained injuries due to a road accident that had occurred on 14.07.2010. He had claimed a sum of Rs.2,00,000/- for the injuries caused to him which according to him was grievous in nature. The petitioner would submit that the accident occurred only due to the negligent driving by the bus



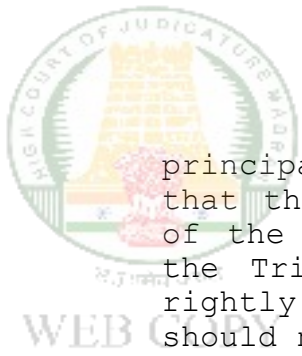
driver bearing registration No.TN-23-B-2277 belonging to the 1st respondent and insured with the 2nd respondent. The petitioner would contend that he had been driving his vehicle bearing registration No.TN-10-S-1318. It is the case of the petitioner that the bus was coming from the opposite direction in a rash and negligent manner and hit against him.

3. The 1st respondent had remained ex parte and the insurance company seeking leave of the Court to contest under all grounds provided under Section 170 of the Motor Vehicle Act, had filed their counter inter alia contending that they are not liable to compensate claimant, since the claimant was not possessing a valid driving license at the time of the accident as he was a minor. They had further contended that with reference to the very same accident M.C.O.P.No.154 of 2011 had earlier been filed and therefore the 2nd claim petition with reference to the very same accident cannot be maintained.

4. The Tribunal below on considering the evidence on record dismissed the application on the ground that the claimant had earlier moved an application in M.C.O.P. No.154 of 2014, on the file of the Sub Court, Vellore and also that the petitioner has not been able to prove that the vehicle of the 1st respondent was insured with a valid policy with the 2nd respondent. Challenging the said order, the claimant is before this Court.

5. The learned counsel appearing on behalf of the claimant would submit that the claimant was totally unaware about the filing of the earlier claim petition since he had not given any instruction to the counsel to file the said claim. He would also draw the attention of the Court to a letter which had been addressed by the counsel appearing in the earlier petition in MCOP No. 154 of 2011 which was later transferred to the learned Additional District and Session Court, Vellore and renumbered as MCOP No.95 of 2012. To this, a reply dated 02.02.2015 is said to have been sent wherein the claimant contended that he was unaware about the proceedings and that he has cancelled the vakalat. Therefore, he would submit that there was no claim petition and therefore an award could be passed in the claim petition particularly when the Tribunal has come to the conclusion that the petitioner is entitled to a compensation of Rs.1,88,754/-.

6. Mr.M.J.Vijayaraghavan, learned counsel appearing on behalf of the insurance company/the 2nd respondent would submit that this is a clear case of forum shopping and that the 2nd petition is not maintainable as per the provision of Order 2 Rule 2 of the CPC. Though the provisions of the CPC would not be applicable to Motor Accident Claims Tribunal, however, the



principal could be telescoped herein. He would further submit that the letter of the earlier counsel as well as the response of the petitioner were documents which had not been marked in the Trial Court. He would submit that the learned Judge had rightly dismissed the said application, therefore, this Court should not set aside the same.

7. Heard the learned counsel.

8. The 1st ground on which the claim petition has been dismissed is that an earlier claim petition had been filed and suppressing the same the 2nd application was filed before the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Vellore,). The learned counsel appearing for the claimant appellant had sought to brush aside the said finding by stating that the appellant/claimant had not engaged the services of the counsel who had appeared in the earlier proceedings in MCOP NO. 95 of 2012 and that a letter to this effect has been given. However, though these documents had not been marked in the Trial Court it has been enclosed in the type set of papers. The manipulation by the appellant is writ large as is evident from a mere perusal of the letter addressed by the claimant/appellant's counsel in the earlier petition dated 01.08.2014 wherein the counsel had informed the claimant that the matter is listed for cross examination on 01.09.2014. However the reply to this letter is issued only on 02.02.2015. The said letter has been dispatched only on the said date. This letter is issued a year after the counter has been filed by the 2nd respondent/ insurance company in the MCOP subject matter of this appeal putting the Court on notice about the pendency of M.C.O.P. filed by the claim petition. This itself clearly proves a fraud being played on Court therefore, once fraud is played on court the claimant cannot seek the indulgence of the Court and claim compensation. The Tribunal has rightly dismissed the claim petition and I do not see any reason to interfere in the same particularly when there has been a fraud manipulation and suppression on the part of the claimant.

9. For the above reasons, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Vellore.

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

+1cc to Mr.C.Anbu, Advocate SR. No. 15442

C.M.A. No.2348 of 2019

PL (CO)
PR (29/04/2022)