



C.M.A.No.1607 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.1607 of 2017
and C.M.P.No.8537 of 2017

P.Arumugam

.. Appellant

-Vs.-

1. Vijaya

2. M.Palani

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.04.2014 made in M.C.O.P.No.188 of 2009 on the file of Motor Accident Claims Tribunal, (Subordinate Court), Harur.

For Appellant : Mr.C.Munusamy

For Respondents : Served-No appearance



C.M.A.No.1607 of 2017

JUDGMENT

WEB COPY

The owner of the offending vehicle, who has been arrayed as first respondent before the Motor Accident Claims Tribunal, (Subordinate Judge), Harur in M.C.O.P.No.188 of 2009 is the appellant before this Court.

2. The respondents despite being served with notice have not entered appearance either in person or through pleader.

3. The facts in brief necessary for disposing of the above appeal are as follows:-

The petitioner has filed the above M.C.O.P.No.188 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Harur claiming compensation of a sum of Rs.5,00,000/- for the injuries sustained by her in a road accident on 03.10.2005. She would submit that she is working as an agricultural coolie, earning a monthly income of Rs.5,000/- per month and that she is aged about 28 years. It is her case that on 03.10.2005 at about 12.30 hrs, she and other coolie workers had boarded a tractor trailer, bearing Registration No.TN-29-B-8847 to unload the crushed jelly. The tractor



C.M.A.No.1607 of 2017

trailer was being driven by the first respondent and the owner is the second respondent. The first respondent was driving the same in a rather rash and negligent manner and when he had suddenly applied the brake, the trailer had capsized on the right side, as a result of which, the petitioner and others had sustained injuries. Therefore, she had filed the above claim petition.

4. The second respondent/owner of the tractor trailer had filed a counter before the Tribunal, in which, he denied that the accident had occurred only on account of the rash and negligent driving of the first respondent. He would also take a plea that the petitioner was a gratuitous passenger and not a coolie engaged by him. He would further submit that on a humanitarian basis, the second respondent had paid a sum of Rs.1,10,000/- for the medical treatment of the petitioner to her husband, Venugopal. However, suppressing the receipt of the said sum, the petitioner has filed the present claim.

5. The Tribunal below, by its Award dated 25.04.2014, held that



C.M.A.No.1607 of 2017

the accident had occurred only on account of the rash and negligent driving of the first respondent and the Tribunal below had proceeded to award a sum of Rs.3,66,500/- as compensation. Challenging the same, the second respondent is before this Court.

6. As already stated, respondents herein though served have not entered appearance. The learned counsel for the appellant/second respondent would contend that when he had prepared a counter in the claim petition, no documents were made available to the second respondent and during the oral evidence, all the documents had been marked through a proof affidavit. However, now on a perusal of the documents, particularly, Ex.P2-Wound Certificate, the appellant has come to see that even according to the husband of the petitioner, i.e.Venugopal, the injuries have been sustained only on account of a wall collapse and not on account of a road accident. Under Ex.P2, it has been stated as follows:-

“Injuries due to alleged wall collapse”

Likewise in Ex.P5, which is the discharge summary from the Department of



C.M.A.No.1607 of 2017

Plastic Re-constructive Surgery and Burns, St.John's Medical College

Hospital, Bangalore. Under the history, it has been stated as follows:-

*“Alleged history of injury to right leg on 03.10.2005,
when a collapsed wall fell on leg right”.*

The learned counsel would submit that in the light of the categoric admission of the petitioner that the injury is not the result of the road accident. The very Award that has been passed has to necessarily be set aside.

7. Heard the arguments of the learned counsel for the appellant and perused the materials available on record.

8. The records would read as contended by the learned counsel for the appellant. Therefore, it is very clear that the injuries have not been sustained on account of a road accident and the claim has been made is a fraudulent one. Therefore, the same has to necessarily be set aside.

9. The learned counsel for the appellant would submit that the



C.M.A.No.1607 of 2017

appellant has already paid a sum of Rs.1,10,000/- to the petitioner and he does not intend to seek any refund of the same.

10. Therefore, considering the above submission and taking into account the fact that the injuries are not the result of the road accident, the civil miscellaneous appeal is allowed and the Award passed by the Tribunal is set aside. In case the appellant has deposited any amount to the credit of M.C.O.P.No.188 of 2009 on the file of the Motor accident Claims Tribunal (Sub Court), Harur, he shall be entitled to its refund. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

srn

To

1. The Motor Accident Claims Tribunal
The Special Subordinate Judge, Cuddalore.
2. The Section Officer,
V.R.Section,
High Court of Madras, Chennai.



WEB COPY



C.M.A.No.1607 of 2017

P.T.ASHA, J.,

srn

C.M.A.No.1607 of 2017
and
C.M.P.No.8537 of 2017

17.10.2022