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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2401 of 2013

Perumal Raju @ Raja Perumal ... Appellant

Vs.

1.Raju

2.Reliance General Insurance Company Ltd.,
Reg. Office Reliance Centre,
19, Walchand Hirachand Marg,
Ballard Estate,
Mumbai 400 001.

3.Venkatalakshmi Kanuri

4.The Oriental Insurance Company Ltd.
Bharat Complex,
29-01-33, Opp. To Nagadevi Talkies,
Rajahmundry 533 104 E.G. Dist.
Andrapradesh.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.09.2012 made in M.C.O.P.No.591 of 2009 on the file of the Motor Vehicle Accident Claims Tribunal, Principal Sub Judge, Krishnagiri.



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For Appellant : Mr.M.Sriram

For Respondents : R1 and R3 set *ex-parte*
before the Tribunal

: Mr.S.Arun Kumar for R2

: M/s.B.Gopalan Associates for R4

JUDGMENT

The appeal is filed against the dismissal of claim petition filed by the claimant in M.C.O.P.No.591 of 2009, dated 12.09.2012 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Krishnagiri.

2. The appellant is claimant in M.C.O.P.No.591 of 2009 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Krishnagiri. He filed the claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.11.2007.

3. According to the appellant, on the date of accident i.e., on 07.11.2007, the appellant was travelling in a Lorry bearing Registration No.AP-16-TU-0628 belonging to the third respondent and insured with the fourth respondent, on NH 5 road at Sarvaipalem Cross Road, Kavali



bearing Registration No.AP-29-T-8499 belonging to the first respondent and insured with the second respondent drove the same in a rash and negligent manner without observing the Traffic Rules, dashed against the vehicle in which the petitioner was travelling. Due to the said impact, the appellant suffered grievous injuries, resulted in amputatiton of left hand.

4. The first respondent who is the owner of the offending vehicle and the third respondent in whose vehicle, the petitioner travelled were set *ex-parte* before the Tribunal.

5. The second respondent/ insurer of the first respondent filed counter statement, denying all the averments made in the claim petition and and stated that the accident did not happen due to the act of the driver belonging to the first respondent. In any event, the compensation claimed by the appellant was excessive and he prayed for dismissal of the claim petition.

6. The fourth respondent/insurer of the third respondent had filed the counter stating that they are only added as a formal parties. He further contended that the driver of the first respondent, drove the vehicle in negligent manner and hit rear side of the lorry which resulted in accident



causing injuries to the claimant and prayed that the above petition is liable to be dismissed in limine as against them.

7. Before the claims Tribunal, appellant examined has P.W.1 to P.W.3 and marked eight documents as Exs.A.1 to A.8. On the side of the respondents R.W.1 and R.W.2 were examined and two documents were marked as exhibits Exs.B.1 to B.4.

8. The Tribunal by its order dated 12.09.2012, has held that, the claimant had filed another claim petition before the Additional District Judge - I, Nellore District and dual claims are not maintainable. Accordingly, dismissed the claim petition of the claimant. Aggrieved over the dismissal of the above claim petition this appeal has been preferred.

9. The learned counsel appearing on behalf of the second respondent/Insurance company filed counter and contended that the driver of the first respondent's vehicle drove the same in a cautious manner by observing the Traffic Rules. The driver of the lorry bearing Registration No.AP-16-TU-0628 belongs to the third respondent, drove the vehicle in a rash and negligent manner and dashed behind the lorry of the first



that the accident occurred only due to the rash and negligent act of the third respondent driver, hence, the first respondent and second respondent are not liable to pay the compensation.

10. The learned counsel appearing on behalf of the third respondent/Insurance company filed counter and contended that the driver of the first respondent was alone responsible for the accident and he drove the vehicle in negligent manner and hit rear side of the lorry which resulted in accident causing injuries to the appellant. The learned counsel further contended that lorry driver of the third respondent was not having a valid driving license at the time of accident and hence, the fourth respondent is not liable to pay the compensation and also disputed the claim made under various heads.

11. Heard the respective counsels appearing on either side and perused the materials available on record before this Court.

12. The Tribunal in Point No.1 has held that there is dual claim made by the claimant herein apart from claim petition filed before the Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P.No.591 of 2009 and one claim petition was filed before the I Additional District Court, Nellore in



M.C.O.P.No.352 of 2008 and rejected the present claim petition on the ground that dual claims are not maintainable. Based on the above finding, Tribunal has dismissed the claim petition without considering any other issues. Aggrieved over the dismissal of the claim petition, the claimant has filed this Appeal.

13. The learned counsel for the claimant would submit that it is true that the claim petition was filed before the I Additional District Court, Nellore and it was filed based on the signature got from the claimant while he was undergoing treatment at Nellore. He has suffered severe injuries including amputation of left hand and for getting proper treatment he returned back to his native place and filed the present claim petition. After retuning to his native place, he has not proceeded with the claim petition which was filed before the Court at Nellore and the same was also dismissed for default.

14. Admittedly, the fact relating to the earlier petition filed before the I Additional District Court, Nellore, which was not pressed and the same was dismissed for default, which was brought to the knowledge of Tribunal. Since there is no order to be passed on merits regarding the claim petition, based on the submissions of the both sides, the Tribunal ought to



have proceeded with the claim petition, in which the claimant has come forward to prosecute and adduce evidence. This Court is of the view that dismissal of the claim petition only on the ground that he has come forward with another petition and even after knowing the fact that the same was not pressed and dismissed for default, dismissal of the claim petition by the Tribunal is not sustainable and the same is liable to be set aside. It is further to be noted that the Tribunal has not passed any finding on the merits in the claim petition i.e., liability to pay the compensation the fact relating that whether respondents are liable to pay compensation etc. Hence, it is a fit case to remand back to the file of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Krishnagiri.

15. In the result, the award passed in M.C.O.P.No.591 of 2009 dated 12.09.2012 on the file of the Motor Vehicle Claims, Principal Sub-Judge, Krishnagiri is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration. The Tribunal is directed to take up the matter at the earliest after serving notice to both the parties and dispose of the same within a period of three months from the date of receipt of a copy of this order. The parties are further granted liberty to file additional evidence, if any required.



WEB COPY 16. Accordingly, the above Civil Miscellaneous Appeal is disposed of with above direction and liberty. No costs.

09.08.2023

gba

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To:

- 1.The Motor Accident Claims Tribunal,
Principal Sub Judge, Krishnagiri.
- 2.The Section Officer,
VR Section,
Madras High Court,
Madras.



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K.RAJASEKAR,J.

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