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C.M.A.No.2001 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2001 of 2018

Padmanathan

... Appellant

..Vs..

National Insurance Company Limited,
No.12, Muruga Complex,
K.K.Road,
Villupuram.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 15.02.2018 made in MCOP.No.51 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Sub- Court No.1, Villupuram).

For Appellant : Mr.D.Pradeep Kumar

for Mr.T.Dhanya Kumar

For Respondent : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant to set aside the impugned award dated 15.02.2018 passed in MCOP.No.51 of 2017 by the Motor Accident Claims Tribunal (Special Sub- Court, No.1) Villupuram.



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2. The appellant / claimant is employed as a Post Graduate Assistant in S.R.Government Girls Higher Secondary School, Valavanur, Villupuram District. On 30.09.2009, when he returned home in his two wheeler bearing Registration No.PY01-AL-2814, near the Sacred Heart Convent, he had applied sudden brake in order to avoid hit on the school student who suddenly crossed the road, and fell down from the bike and sustained grievous injuries on his head, hip, left kidney, face and all over his body, as a result of which, he was unconscious. Thereafter, he has been taken to the Government Headquarters Hospital, Villupuram and later transferred to PIMS Hospital, Puducherry and thereafter shifted to Apollo Speciality Hospital, Chennai. Claiming compensation of a sum of Rs.21,50,000/-, the appellant / claimant has filed a petition in MCOP.No.51 of 2017 before the Motor Accidents Claims Tribunal, Villupuram.

3. Controverting the same, the respondent / Insurance Company has filed a counter. It is stated that the accident had occurred due to the rash and negligent driving of the bike by the appellant at high speed in a school zone,



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that too, on the busy National Highways road. Hence, the claimant is not entitled for any relief as it is a clear case of own negligence and thus, sought for dismissal of the appeal.

4. Before the Tribunal, three witnesses were examined on the side of the appellant / claimant as Exs.P.W.1 to P.W.3 and 21 documents were marked as Exs.P1 to P21. On the side of the respondent / Insurance Company, two witnesses were examined as Exs.R.W.1 and R.W.2 and two documents were marked as Exs.R1 and R2 and also marked Ex.A1 and Ex.C1 and Ex.C2.

5. Not satisfied with the materials and evidence available on record and also relying on a judgment of this Court in ***ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY VS. GANGADEVI [2012 (2) TN MAC 388]***, the Tribunal dismissed the claim petition filed by the appellant / claimant with liberty to the claimant to make appropriate claim before the appropriate forum in terms of the Policy rules under Personal Accident Cover for Owner – Driver for appropriate compensation. Aggrieved against



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the award of the Tribunal, the appellant/claimant has filed the present Civil Miscellaneous Appeal.

6. Heard the learned counsel for the appellant/claimant and the learned counsel for the respondent/Insurance Company and perused the entire materials available on record.

7. The learned counsel for the appellant has submitted that due to the said accident, the claimant suffered grievous injuries. However, the Tribunal failed to appreciate evidence in a proper manner and dismiss the claim petition. Hence, he prays to allow the Appeal.

8. The learned counsel for the respondent has submitted that the Tribunal has rightly considered the materials and evidences and has dismissed the claim petition for compensation and hence, the same does not require any interference by this Court. Hence, he prays for dismissal of the Appeal.



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9. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the claimant that too in a School zone and therefore, the claimant is wholly liable for his negligence. Further, the claimant has failed to adduce proper evidence and materials in support of his claim.

10. A perusal of the records would reveal that the appellant has not filed the claim petition properly with the adequate materials in support of his claim.

11. In view of the foregoing discussions, this Civil Miscellaneous Appeal is dismissed with liberty granted to the appellant to make appropriate claim before the appropriate forum in terms of the Policy rules under Personal Accident Cover for Owner – Driver for appropriate compensation. No costs.

Index: Yes/No
Internet : Yes/No
gv

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A.A.NAKKIRAN, J.

gv

To

1.The Motor Accidents Claims Tribunal
(Special Sub- Court No.1, Villupuram).

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

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13.02.2023