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C.M.A.No.393 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.393 of 2019

Elumalai
S/o.Chinnaraj

... Appellant

Vs.

1. Manikandan
S/o.Kuppusamy

2. The Divisional Manager
The National Insurance Co. Ltd.,
19, Officer Line
Vellore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 25.01.2008 made in MCOP No.27/2005 on the file of the Motor Accidents Claims Tribunal Principal Sub Judge, Tiruvannamalai.

For Appellant : Mr.R.Rajarajan
For Respondents : Mr.D.Bhaskaran, for R2
R1 - Notice dispensed with



C.M.A.No.393 of 2019

WEB COPY

J U D G M E N T

This appeal is directed against the Award dated 25.01.2008 passed in M.C.O.P.No.27 of 2005 on the file of the Motor Accidents Claims Tribunal Principal Sub Judge, Tiruvannamalai.

2. For the purpose of convenience, the parties are described as per their ranking before the Tribunal.

3.The facts in nutshell are as follows :

On 02.04.2004, while the claimant-Elumalai was travelling as a pillion rider in a motorcycle, which was driven by his friend one Venkatesan going to Chennai, at about 12.45 a.m., near Big Street in Tiruvannamalai, a Auto bearing Registration No.TSJ 6152, belonging to the first respondent and insured with the Insurance Company, which was driven by its driver in a rash and negligent manner, dashed against the claimant's motorcycle. Due to the said impact, the claimant and Venkatesan sustained grievous injuries. Hence, the claimant filed the claim petition seeking



C.M.A.No.393 of 2019

Rs.5,00,000/- as compensation.

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4. Before the Tribunal, the first respondent/owner of the Auto bearing Registration No.TSJ 6152 remained *ex-parte*.

5. The claim petition was resisted by the second respondent/Insurance Company by filing a counter statement denying the manner of accident as projected by the claimant in the claim petition. They also denied the avocation and income mentioned in the claim petition.

6. In order to prove the claim, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P8 were marked. On the side of the Insurance Company, neither any oral evidence was adduced nor documents were marked.

7. The Tribunal after analysing the entire evidence, dismissed the claim petition. Aggrieved by the same, the claimant has filed the present appeal.



C.M.A.No.393 of 2019

8. The learned counsel for the appellant/claimant submitted that a Auto bearing Registration No.TSJ 6152, which was driven by its driver himself admitted that he has committed the offence under Section 304(A) IPC and he has also paid fine, therefore, the Tribunal ought not to have gone against the admission made by the Auto driver. Further, it is settled preposition of law that in criminal cases, the prosecution has to prove its case beyond reasonable doubt, but in civil cases the person, who filed the case, has to prove the case based on preponderance of probabilities. He further submitted that the claim petition filed under the Motor Vehicles accident, the claimant can only prove the preponderance of probabilities. The claimant has proved his claim by marking Ex.P1/F.I.R and Ex.P4/Charge sheet. However, the Tribunal failed to appreciate the settled proposition of law, simply dismissed the petition on the ground that there are certain discrepancies found in the complaint, claim petition and deposition and the Tribunal has not properly appreciated the scope of the scheme and dismissed the petition on the mere technical grounds. Therefore, the decisions of the Tribunal is liable to be set aside and the appeal has to be allowed.



C.M.A.No.393 of 2019

WEB COPY

9. The learned counsel for the respondent/Insurance Company submitted that in complaint and F.I.R/Ex.P1, it has been stated that auto which was coming in the opposite direction, dashed against the motorcycle. In the proof affidavit, the claimants stated that accident took place while they were standing on the side of the road to attend nature's call. Further, P.W.1 and P.W.2 during cross examination admitted that while they were riding in the motorcycle towards left, suddenly the auto which came in the same direction overtook the motorcycle and turned into the street which caused the accident. Hence, there are different versions regarding the manner of the accident on the side of the claimant, which would further strengthen the initial doubt that arose over the claim. He further submitted that the owner of the two wheeler was not impleaded as a party in the claim petition and also they have not produced any valid driving licence of the driver of the two wheeler. Ex.P2/a copy of the Motor Vehicle Inspector Report of the auto shows that there was no damages to the Auto, whereas, the claimant has not produced any inspection report of the two wheeler. Therefore, the Tribunal has rightly appreciated the entire materials and



C.M.A.No.393 of 2019

dismissed the claim

WEB COPY



C.M.A.No.393 of 2019

petition, since the claimant has not proved the manner of the accident and negligence on the part of the auto driver.

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

11. On a perusal of the entire materials, it is seen that on the side of the claimants there are three difference versions regarding the manner of the accident and he has not proved the manner of the accident. The claimant has also not produced any valid driving licence of the driver of the two wheeler (Venkatesan). It is the specific defence of the respondent/Insurance Company that the accident had not occurred due to rash and negligent driving of the auto driver. Ex.P2/Motor Vehicle Inspection Report of the auto also clearly shows that there was no damages to auto. That being the case, the claimant has not produced any Motor Vehicle Inspection report of the two wheeler as to whether any damages has been caused to the two wheeler. There is no oral and documentary evidence



C.M.A.No.393 of 2019

to prove the claim made by the claimant and the claimant had withheld the best piece of evidence to prove his claim and the Tribunal has rightly dismissed the claim petition.

12. This Court as a final Court of fact finding, while re-appreciating the entire materials finds that the Tribunal has rightly appreciated the entire evidence and dismissed the claim petition and there is no perversity or infirmity in the Award passed by the Tribunal and hence, there is no merit in the appeal and the same is liable to be dismissed.

13. The appeal sans merit and the same is accordingly dismissed. There shall be no order as to costs in the present appeal.

22.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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C.M.A.No.393 of 2019

To

1.The Principal Sub Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

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



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C.M.A.No.393 of 2019

P.VELMURUGAN, J.

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C.M.A.No.393 of 2019

22.09.2023