



C.M.A.No.1351 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1351 of 2019

Velanganni

... Appellant / Petitioner

Vs.

1. Sagayaraj

2. Shahul Hameed

3. New India Insurance Company Limited,
Represented by its Branch Manager,
149, Bharathiar Road,
Karaikal,
Puducherry.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2009 made in M.A.C.T.O.P.No.51 of 2008 on the file of the Motor Accidents Claims Tribunal, learned Additional District Judge-cum-Presiding Officer, Karaikal.



C.M.A.No.1351 of 2019

For Appellant : Ms.Meharunisha
for Mr.M.Sudhakar

For Respondents : No appearance for R1
Not ready notice for R2
Mr.T.Jayaraman for R3

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Tribunal in M.A.C.T.O.P.No.51 of 2008 filed by the claimant, the appellant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. On 18.02.2007 at about 8.00 am, the claimant was proceeding on his bicycle at Nagai-Karaikal main road towards South to North direction. When he went near Thirumalairayanar River bridge, at that time, a TVS-XL bearing Registration No.TN-51-A-7782 belonging to the second respondent and insured with the third respondent, rode by its rider / first respondent herein in a rash and negligent manner on the opposite direction and dashed against the claimant. Therefore, the claimant was thrown on the



C.M.A.No.1351 of 2019

road and sustained fractures on the various parts of the body. He was admitted in the G.H.Karaikal Hospital, where he took treatment as inpatient for seven days and thereafter, he took treatment in the private hospital for two months. Due to the injuries sustained in the accident, the claimant could not work as before. Hence, he filed M.A.C.T.O.P.No.51 of 2008 claiming compensation for a sum of Rs.3,00,000/-.

3. The Tribunal after considering the case of the petitioner as well as the respondents came to the conclusion that the accident occurred due to the negligence of the injured, i.e., petitioner and that the petitioner has not proved his age, avocation etc., That apart, on perusal of the exhibits before the Tribunal, based on the Ex.P1 - copy of the FIR, the Tribunal came to the conclusion that the complaint was lodged by the wife of the injured who is actually a hearsay witness, the injured / claimant has not properly stated the incident to the doctor resulting in non-filing of criminal case on the date of the accident. The Tribunal also took note of the fact that the investigating officer has not been examined and that the accident register was not marked



C.M.A.No.1351 of 2019

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before the Tribunal. The Tribunal also took into consideration the contradiction in the date of the accident and the date of the discharge slip considering the injury sustained by the injured / claimant. Citing the said reasons, the Tribunal rejected the claim petition without awarding any compensation. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant submitted that the Tribunal erred in holding that the injuries sustained to the appellant is not because of the accident. The Tribunal ought to have seen the counter of the first respondent, where the accident was not denied and that the Insurance Company has also not taken any specific stand with respect to the accident. He further submitted that the Tribunal erred in not fixing any compensation for the injuries sustained by the appellant in the accident. Further, non-examination of investigation officer is not a fatal to the case, as the same is not mandatory and hence, he prays for setting aside the impugned award.

5. The learned counsel appearing for the third respondent /



C.M.A.No.1351 of 2019

Insurance Company submitted that the accident happened only due to the contributory negligence on the part of the appellant. Further, as per Ex.P1 - copy of the FIR, it shows that the wife of the appellant, who is actually a hearsay witness only lodged the complaint on the next day of the accident and that the appellant has not properly explained as to why he has not stated before the doctor who treated him that he sustained injuries because of the road traffic accident. He further submitted that as per Ex.P1 - copy of the FIR it is clear that one Peter has admitted the appellant in the hospital, however the said Peter was not examined before the Tribunal and the accident register was also not marked before the Tribunal. Hence, he prays for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. This Court on considering the materials placed before this Court



C.M.A.No.1351 of 2019

WEB COPY

and the submissions made by both sides is able to found that the injured claimant has not produced the copy of the accident register before the Tribunal and he has produced only the discharge slip. The injured claimant has examined P.W.3 - Resident Medical Officer of the Government Hospital, Karaikal, where he under took the treatment. P.W.3 in his cross-examination stated that the injured claimant was not treated as medico legal case and that the claimant has stated that he himself fell down from the bicycle and sustained injuries and therefore, the wound certificate certificate was also not issued.

8. That apart on perusal of the Ex.P1 - copy of the FIR shows that the wife of the appellant, who is actually a hearsay witness has only lodged the complaint on the next day and that the injured claimant has not properly explained as to why he has not stated before the doctor who treated him that he sustained injuries because of the road traffic accident. Another pertinent factor is that the date of the accident and the date of the discharge summary is contradictory to each other considering the nature of the injuries sustained



C.M.A.No.1351 of 2019

WEB COPY

by the injured appellant. Hence, this Court has no hesitation to come to the conclusion that the Tribunal has correctly considered the facts and circumstances of the case and rightly rejected the claim of the injured claimant.

9. Accordingly, the award dated 21.08.2009 made in M.A.C.T.O.P.No.51 of 2008 is sustained and the present Civil Miscellaneous Appeal is dismissed. No costs.

09.11.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,
learned Additional District Judge-cum-Presiding Officer,
Karaikal.

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



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C.M.A.No.1351 of 2019

M.DHANDAPANI, J.

vji

C.M.A.No.1351 of 2019

09.11.2023