



C.M.A(MD)No.1779 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

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Alagarsamy (Died)

... Appellant/Claimant

2.Chitra

3.Geetha

4.Savadammal

... Proposed appellants

(Appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant vide Court order, dated 25.04.2023 made in C.M.P(MD)Nos.4385 & 1810 of 2023 & C.M.P(MD)SR.No.25002 of 2023)

Vs.

1.Arunachalam Chettiar

2.The Divisional Manager,
National Insurance Company Limited,
Rajapalayam.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award, dated 21.12.2009 made in M.C.O.P.No.494 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul and praying to set aside the same.

For Appellant : Mr.S.Pugalendhi

For R2 : M/s.P.Malini



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JUDGMENT

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The present appeal has been filed by the claimant challenging the dismissal of the claim petition by the Motor Accident Claims Tribunal, Dindigul in M.C.O.P.No.494 of 2005.

2. According to the injured claimant, while he was a pillion rider in a two wheeler that was driven by his brother on 04.09.2005. A Mahindra van coming from the opposite direction had dashed behind the two wheeler and he sustained grievous injuries in the said accident.

3. The claimant has further contended that he originally got treatment from Sugam hospital. But later, he was admitted to Graham hospital on 11.09.2005. He had lodged an F.I.R on 12.09.2005. According to the claimant, he had sustained fracture in both bones in the left leg. Therefore, he prayed for a sum of Rs.1,50,000/- as compensation.

4. The insurance company of the Mahindra van had filed a counter contending that the petitioner has to establish the fact that the accident has occurred on 04.09.2005 at about 02.30 p.m. The petitioner has also

<https://www.mhc.tn.gov.in/judis> not explained the delay in lodging an F.I.R after a period of 7 days. The



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insurance company has also questioned the validity of the insurance policy and the quantum of compensation as prayed for.

5. The tribunal after considering the oral and documentary evidence, arrived at a finding that there are no medical records to establish that the claimant has sustained grievous injuries in an accident that has taken place on 04.09.2005. In fact, Exhibit P.5 indicates that the claimant got admitted to a clinic only on 11.09.2005 and he was discharged on 13.09.2005. Exhibit P.6 indicates that the claimant has purchased some medicines in October and December 2005. The tribunal further found that it cannot rely upon the criminal Court records in which the driver of the offending vehicle had pleaded guilty and paid fine. The tribunal had dismissed the claim petition on the ground that the claimant had not established that an accident has taken place on 04.09.2005 and the injury sustained by him are related to the said accident. The said order is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, the claimant was a pillion rider and he had sustained injuries due to an accident on 04.09.2005 which was caused due to the rash and negligent driving on the part of the driver of a Mahindra van. He further contended that the claimant has produced Exhibit P.1/F.I.R, Exhibit P.2/wound



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certificate and Exhibit P.4/judgment of the criminal Court. The learned counsel appearing for the appellant further relied upon Exhibits P.5 and P.6/medical bills. The learned counsel appearing for the appellant also relied upon Exhibit P.8/wound certificate and P.9/x-ray to indicate that he has sustained grievous injuries and he has also taken treatment. When all these documents are placed before the Court, the tribunal ought to have accepted the said documents and allowed the claim petition. However, the tribunal has erroneously dismissed the claim petition on the ground that the claimant has not established the date and manner of accident as claimed in the claim petition. Hence, he prayed for allowing the appeal.

7. Per contra, the learned counsel appearing for the respondent had contended that though the claimant has pleaded that the accident has taken place on 04.09.2005, there are no medical records whatsoever till 11.09.2005. In fact, if the claimant had sustained grievous injuries, like fracture in both the legs, he would have been admitted to a hospital or at least some medical bills could have been produced relating to the period between 04.09.2005 to 11.09.2005. The claimant has also not explained the delay in registering F.I.R. Therefore, when the claimant has miserably failed to plead and prove the date and manner of accident, the tribunal was right in dismissing the claim petition.



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8. I have carefully considered the submissions made on either side and perused the records.

9. It is the specific case of the claimant that as a pillion rider, he sustained grievous injuries in an accident at about 02.30 p.m on 04.09.2005. All the medical records produced on the side of the claimant start only from 11.09.2005. Even in those medical records, there are no reference about a road traffic accident on 04.09.2005. The claimant has not even produced single medical bill for the period between 04.09.2005 and 11.09.2005. The F.I.R has also been lodged after the claimant was admitted to the clinic on 11.09.2005.

10. A perusal of Exhibit P.5 indicates that he had consulted a clinic on 11.09.2005 and he was discharged on 13.09.2005 and Exhibit P.13 is a set of medical bills which are after 11.09.2005 till 27.12.2006. A perusal of Exhibit P.6 indicates that the medical bills are relating to October and December 2005. A perusal of Exhibit P.2/wound certificate indicates that the claimant has sustained grievous injury to the extent of fracture in both the legs. The claimant has relied upon a disability certificate said to have been issued on 22.10.2008 and an X-ray on the said date. Exhibits P.8 and P.9 are 3 years after the filing of the claim



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petition. This Court is of the considered opinion that only for the purpose of issuance of disability certificate, these x-rays have been taken in October 2008.

11. The case of the claimant that two wheeler was driven by his brother coupled with the fact that the claimant has not produced any medical records from 04.09.2005 to 11.09.2005 create doubt in the mind of the Court with regard to the date and manner of the accident and the involvement of the Mahindra van in the said accident. Therefore, the tribunal was right in arriving at a finding that the claimant has not established the manner of accident and the involvement of the Mahindra van. This Court does not find any merits in the appeal.

12. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

06.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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