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C.M.A.No.2381 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 10.06.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.2381 of 2021

K.Balakrishnan

.. Appellant

Vs

1.Lakshmi

2.Venkatesan

3.Satheesh

4.Latha

5.The Manager,
National Insurance Company Limited,
No.66, Greams Road,
Murugesu Naicker Complex,
Chennai – 6.

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 26.03.2021 made in M.C.O.P.No.19 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge – I, Thiruvallur.

For Appellant

: Ms.Lekha Sankar

For R5

: Ms.R.Sreevidhya

For R1 to R4

: No Appearance



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JUDGMENT

This appeal has been filed by the owner of the vehicle, which was involved in the accident resulting in the death of the deceased/Lakshmipathy.

2. According to the appellant, he was set exparte by the Tribunal and he was not granted an opportunity to defend the false claim made by the claimants seeking compensation.

3. As seen from the impugned award, the appellant has been set exparte by the Tribunal and he did not file the counter statement to the claim petition filed by the claimants. The appellant had engaged a counsel, who, according to the appellant, did not defend his case by filing a counter statement to the claim petition. The appellant also categorically contends that the motor accident claim made by the claimants is a fraudulent claim.

4. Admittedly, the appellant was set exparte by the Tribunal for non-filing of the counter statement. Though he had earlier engaged a



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counsel, who filed his vakalat, but, subsequently, did not diligently defend the case on behalf of the appellant. In the impugned award, the fifth respondent/Insurance Company has been absolved from any liability to pay compensation on the ground that the driver of the car was a minor at the time of the accident and due to the policy violation, the Tribunal has absolved the liability of the fifth respondent/Insurance Company.

5. The learned counsel for the appellant also contends that the finding of the Tribunal absolving the liability of the fifth respondent/Insurance Company is incorrect. According to her, since the appellant was not given sufficient opportunity to defend his case, the impugned award is opposed to the principles of natural justice.

6. The respondents 1 to 4/claimants are duly represented by a counsel in this appeal. However, on the last hearing date, i.e., on 10.04.2024, as well as on this date, eventhough the name of their counsel is disclosed in the cause list, they remain unrepresented. The learned counsel for the fifth respondent/Insurance Company alone is present.



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7. As seen from the grounds raised by the appellant, there are several contentious issues raised by the appellant, which will have to be adjudicated on merits and in accordance with law based on the additional oral and documentary evidence to be adduced by the parties. The appellant contends before this Court that he has got sufficient evidence to disprove the claim of the claimants, namely, respondents 1 to 4.

8. Since the appellant has not filed his counter statement to the claim petition filed by the claimants before the Tribunal and did not cross-examine the claimants' witnesses and in view of the fact that there is no representation for the claimants/respondents 1 to 4 today as well as on the last hearing date, this Court deems it fit to set aside the impugned exparte award to enable the appellant to produce additional oral and documentary evidence to prove his contention that he is not liable to pay compensation as determined under the impugned award. No prejudice would be caused to any of the parties, if the award is set aside and the matter is remanded back to the Tribunal for fresh consideration.



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9. For the foregoing reasons, the impugned award passed by the Tribunal is set aside and the matter is remanded back to the very same Tribunal, namely, Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur, for fresh consideration. In the result, the Civil Miscellaneous Appeal is disposed of in the following manner:-

(a) The appellant is directed to file a counter statement to the claim petition filed by the claimants within a period of 15 days from the date of receipt of a copy of this judgment.

(b) The Tribunal is directed to pass an award, after permitting all the parties to let-in oral and documentary evidence additionally, on merits and in accordance with law, within a period of six months thereafter.

(c) C.M.P.No.13494 of 2021 is closed. No Costs.

10.06.2024

Index: yes/no
Neutral citation: yes/no
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ABDUL QUDDHOSE,J.

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To

Motor Accidents Claims Tribunal-I,
Special District Court,
Thiruvallur.

C.M.A. No.2381 of 2021

10.06.2024