



C.M.A. (MD) No. 1023 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1023 of 2013

Ganesan

.. Appellant/Petitioner

Vs.

1.Astalakshmi Logistics
No.51/84-1, Muniasampuram 2nd Extension,
Tuticorin.

2.Royal Sundaram Alliance Insurance Company Ltd.,
NO.176-D-F, Trivandrum Road,
Vannarpettai,
Tirunelveli.

.. Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2013 in M.C.O.P.No.149 of 2012 on the file of the Motor Accident Claims Tribunal/I-Additional District Judge, Thoothukudi.

For Appellant : Mr.M.P.Senthil

For R2 : Mr.S.Srinivasa Raghavan

For R1 : No appearance



C.M.A. (MD) No. 1023 of 2013

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed by the Motor Accident Claims Tribunal, I-Additional District Judge, Thoothukudi in M.C.O.P.No.149 of 2012 dated 09.01.2013 wherein the appellant herein has filed a claim petition before the Tribunal seeking compensation of Rs.4,18,350/- from the respondents for damages of his car. The tribunal dismissed the said claim petition. Being aggrieved by the order of the Tribunal, the claim petitioner has preferred this appeal.

2. The brief averments of the petition filed before the Tribunal are as follows:

According to the petitioner, the vehicle Scorpio Van bearing Registration No.TN-03-A-0009 belongs to him and the same was insured with the second respondent. On 12.12.2010, at about 12.30 noon, when the vehicle was plying north of Eppothumvendran bridge in Tuticorin to Madurai National Highway, at the time a Tractor Lorry bearing Registration No. TN 9AC 8898, belonging to the first respondent insured



C.M.A. (MD) No. 1023 of 2013

WEB COPY

with the 2nd respondent, came in a rash and negligent manner and dashed against the car and the passengers travelled in the car sustained injuries and the car also got damaged to the tune of Rs.4,18,350/-.The accident took place due to the negligence on the part of the driver of the first respondent. The first respondent's vehicle, Tractor lorry was insured with the 2nd respondent, therefore the petitioner filed the claim petition.

3. According to the first respondent, they filed counter that the accident took place only due to the negligence on the part of the driver of the petitioner's vehicle. Due to political influence, the police registered FIR as against the first respondent's lorry driver. The damages caused to the vehicle are denied as false. The first respondent's vehicle was insured with the second respondent on the date of accident. Hence, the second respondent is liable to pay compensation.

4. According to the second respondent, they filed counter that the accident took place due to the negligence on the part of the driver of the petitioner's vehicle, who had driven the petitioner's car in a rash and negligent manner. He suddenly applied break due to which he lost his



C.M.A. (MD) No. 1023 of 2013

WEB COPY

control and dashed against the lorry. Due to political influence, the FIR was registered against the driver of the first respondent. Therefore, the 2nd respondent is not liable to pay any compensation to the petitioner.

5. Before the trial Court, in order to prove the case, on the side of the petitioner, he examined PW1 to PW3 and marked Ex.P1 to Ex.P3. On the side of the respondents, RW1 was examined and Ex.R1 and Ex.R2 were marked.

6. After evaluating the oral and documentary evidences adduced on either side, the tribunal has dismissed the petition on the ground that the petitioner has already filed claim form before the petitioner's insurance company, namely, National Insurance Company and still it is pending and the same is under process. As against the said order, the present appeal has been filed by the petitioner in the main petition.

7. The learned counsel for the appellant would contend that the appellant's vehicle met with an accident and the accident took place due to the negligence on the part of the driver of the first respondent and the 2nd



C.M.A. (MD) No. 1023 of 2013

WEB COPY

respondent is the insurance company of the first respondent's vehicle. The damage was occurred to the tune of Rs.4,18,350/- and thereby the respondents are liable to pay the compensation for the above said damages. The appellant has produced necessary bills for the entire amount spent for repairing his vehicle. But, the tribunal has erroneously dismissed the application on the ground that the petitioner has already been claimed before the petitioner's insurance company and still the said claim form is pending. The learned counsel further submitted that on the date of accident, no policy was in force with the petitioner's insurance company, ie., National Insurance Company. Therefore, the claim petition is not pending before the said insurance company. However, he had already produced the entire bills and the accident also took place due to the negligence on the part of the driver of the first respondent and thereby the 2nd respondent is liable to pay the above cost for damages caused to the vehicle. Therefore, the order passed by the tribunal is liable to be set aside.

8. The learned counsel for the 2nd respondent would contend that the appellant had already filed a claim petition before the National Insurance Company which is the insurance company of the petitioner's



C.M.A. (MD) No. 1023 of 2013

WEB COPY

vehicle and thereby the Tribunal has dismissed the petition. The appellant came before this Court without any pleadings and without producing any documents relating to his first claim before his insurance company. Hence, this Court cannot pass any orders in the absence of any proof as to whether the petitioner's first claim petition was either rejected or any orders have been passed by his insurance company. But, the available evidence clearly shows that the claim petition is still pending. Therefore, the order passed by the tribunal is in order and the present appeal is liable to be dismissed.

9. This Court has considered the submission made by either side counsel and perused the materials available on record.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

(i) Whether the appeal is liable to be allowed or not?

11. The main contention of the appellant is that the vehicle got damaged for a sum of Rs.4,18,350/-. The accident took place due to the



C.M.A. (MD) No. 1023 of 2013

negligence on the part of the driver of the first respondent and there is no dispute that the first respondent's vehicle was insured with the 2nd respondent on the date of accident. However, the petitioner himself stated in his evidence that he already submitted the claim form before the National Insurance Company in which the petitioner's vehicle was insured and thereby the trial Court, after taking into consideration of the evidence, dismissed the application. But, now the appellant's contention is that there is no chance to submit those papers since on the date of accident, the vehicle was not insured with the National Insurance Company. Therefore, considering the facts and circumstances of the case, without going to the merits of this case, this Court feels that it is appropriate to dismiss this appeal by giving liberty to the appellant to file a fresh petition before the tribunal by making appropriate plea with sufficient documents in the manner known to law since the plea that no chance to file petition before the insurance company where his vehicle was insured was taken by the appellant. Therefore, this appeal is liable to be dismissed with liberty to file a fresh application before the tribunal to work out his remedy.

12. With the above said observations, this Civil Miscellaneous



C.M.A. (MD) No. 1023 of 2013

WEB COPY

Appeal is dismissed with liberty to the petitioner to file a fresh application with sufficient evidence and documents and to work out his remedy in the manner known to law and also the petitioner is entitled to the benefit under Section 14 of the Limitation Act. No Costs.

20.02.2024

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

To

1. The Motor Accident Claims Tribunal/
I-Additional District Judge, Tuticorin.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1023 of 2013



WEB COPY



C.M.A. (MD) No. 1023 of 2013

P. DHANABAL, J.

PJL

C.M.A. (MD) No. 1023 of 2013

20.02.2024