



CMA(MD)No.979 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

CMA(MD).No. 979 of 2022

Arunkumar

Appellant

vs.

1.U. Murugan

2.The Branch Manager,
United India Insurance Company Ltd.,
having its office at D.No.54-A,
Mythili Nivas,
Palani Road,
Dindigul.

Respondents

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the order passed in MCOP.No.354 of 2020 (CNR.No.TNDG050004862020) on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge (To deal with MCOP Cases), Dindigul, dated 28.06.2022.



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For Appellant : Mr. A. Saravanan

For 2nd respondent : Mr. J.S. Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 28.06.2022 passed in MCOP.No. 354 of 2020 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Dindigul.

2. The un-successful claimant in MCOP.No.354 of 2020 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Dindigul is the appellant in the appeal.

3. The summary of the facts leading to the appeal are as follows:

(a) The claimant, Arunkumar, was a minor at the time of accident. While driving the two wheeler borrowed by him from his friend he met with an accident on 08.10.2020. The minor Arunkumar while trying to overtake the Tata Ace Van which was passing in front of him went to the wrong side of the road and hit the 1st respondent Maruthi Versha Car.



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The claimant sustained fracture in the right leg, right side shoulder and multiple injuries on the right side of the body. The claimant was studying 12th Standard at the time of accident and because of the injuries sustained by him in the accident he filed the claim petition claiming a sum of Rs.10,00,000/- as compensation, initially, through his father, but later, he contested the case by himself on attaining majority. The first respondent, who is the owner of the Maruthi Versha Car filed a counter, wherein he denied the negligence on his part. The first respondent's case was that the claimant himself was negligent and it was his reckless and negligent driving that resulted in the accident. The second respondent / insurer filed a counter denying all the averments made in the claim petition. The second respondent further stated that the accident occurred only due to the rash and negligent driving of the claimant, who did not possess a valid driving license at the time of accident.

(b) The Tribunal on a consideration of the entire evidence on record held that the claimant was the tortfeasor, that the accident occurred only due to his own negligence and on such finding, dismissed the claim petition, which was filed under Section 166(1)(a) of the Motor Vehicles Act. Challenging the dismissal order, dated 28.06.2022 the above appeal is



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filed.

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4. The learned counsel appearing for the appellant / claimant submitted that the finding of the Tribunal on the issue of negligence was erroneous and in any event, the Tribunal could have considered the case as one of contributory negligence and apportioned the liability in appropriate ratio. According to the counsel, no doubt, the accident occurred when the claimant was trying to overtake the Tata Ace vehicle, which was proceeding in front of his two wheeler by going to the wrong side of the road, but, if the driver of the Maruthi Versha Car had driven the vehicle with reasonable speed, the accident could have been averted. The learned counsel submitted that the Tribunal ought to have considered that the driver of the Maruthi Versha Car contributed to the accident by not driving the vehicle with a reasonable speed and not taking any steps to avert the accident. The learned counsel therefore, pleaded that the case may be remitted back to the Tribunal and an opportunity be given to the claimant to establish the contributory negligence of the Maruthi Versha Car driver and the driver of the Tata Ace vehicle.

5. The learned counsel for 2nd respondent / Insurance



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Company on the other hand submitted that the finding of the Tribunal on negligence cannot be faulted as the Tribunal has dealt with the entire evidence and returned the finding on negligence against the claimant. The learned counsel further submitted that there was absolutely no merit in the appeal and hence, the same deserved to be dismissed.

6. I have heard the learned counsel appearing for the appellant and the 2nd respondent and perused the records.

7. The admitted fact is that the claimant did not possess a valid driving licence and was a minor at the time of accident. The claimant had borrowed the vehicle from his friend and on 08.10.2020, while he was proceeding from East to West direction on Aathoor road and while trying to overtake the Tata Ace Van, went to the extreme wrong side of the road and dashed against the Maruthi Versha Car, which was coming in the opposite direction that is from West to East. Due to the impact of the collision, the claimant sustained multiple injuries and was admitted to the Government Hospital and thereafter, taken to JCB Hospital for treatment of his injuries. The First Information Report, which was registered by the father of the claimant was marked as Ex.P1 and it was clearly stated



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therein that while the claimant was trying to overtake the Tata Ace Van, he hit against the Maruthi Versha Car which was coming in the opposite direction. The rough sketch was marked as Ex.X4, by the second respondent. From the rough sketch it is seen that the claimant drove the vehicle from east to west, on the extreme right side of the road, which is wrong side of the claimant. The claimant who was examined as PW.2 in his cross examination stated as follows:

□முதல் தகவல் அறிக்கை என் தந்தை விவரம் கூறி பதிவு செய்யப்பட்டது. மேற்படி ம.சா.ஆ.1 ஆவணத்தில் நான் வாகனத்தை முந்த முயன்று எதிரே வந்த காரில் மோதி விபத்துக்குள்ளானது என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். எதிரே வந்த “Maruthi Versha TN 57 J 159” என்ற வாகனம் அவரது திசையில் சரியாக சாலை விதிகளை பின்பற்றி வந்தார்கள் என்றால் சரிதான்□.

8. From the evidence of claimant it is clear that there was absolutely no fault or negligence on the part of the driver of the Maruthi Versha Car. In the light of the admission of the claimant, who was aged about 19 years at the time of cross examination, it is clear that it was his own negligence that caused the accident. The Tribunal has considered the



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evidence in detail and returned the finding of negligence against the claimant which cannot be faulted.

9. The learned counsel appearing for the appellant submitted that just because the claimant did not possess a valid driving licence, the negligence cannot be mulcted on the claimant alone and in support of the submission the learned counsel relied on the Judgment of the Hon'ble Supreme Court reported in **2008 (12) SCC 436 (Sudhir Kumar Rana Vs. Surinder Singh and others)**, wherein at paragraph No.9 it is held as follows:

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

10. There is no dispute on the aforesaid legal proposition.



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The question is whether as a fact the negligence of the person not holding the driving licence has been established. In the present case, it is seen that the claimant himself has admitted that there was no fault on the part of the Maruthi Versha Car and the accident occurred while he was trying to overtake the Tata Ace Van which was proceeding in front of him in the same direction. It is seen that the claimant while trying to overtake the Tata Ace Van went to the extreme right side of the road which was his wrong side and hit against the Maruthi Versha Car, which was proceeding from West to East direction i.e., in the opposite direction of the appellant. Therefore, it is clear that the appellant has crossed the road on the wrong side by overtaking the Tata Ace Van and hit the car which was proceeding in the opposite direction. When the facts of the case are crystal clear and the evidence of PW.2 does not support his case, there is no reason why the finding of the Tribunal should be deviated. It is settled legal position that remand cannot be ordered for mere asking. Unless until the Appellate Court is satisfied that the Judgment and Decree of the lower Court is erroneous and liable to be set aside remand cannot be ordered. Considering the facts and circumstances of the case I am of the view that the finding of the Tribunal is backed by the evidence on record and hence, unassailable. For all the above reasons, I am of the view that there are no



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merits in this appeal and the same is rejected and the Judgment and Decree, dated 28.06.2022 passed in MCOP.No.354 of 2020 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dindigul, is confirmed.

11. In the result, this Civil Miscellaneous Appeal is dismissed.

No costs.

12. No doubt it is a pathetic case, but this Court can only sympathise with claimant and hope that people understand that no one has a license to violate the law.

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Index : Yes/No

Internet : Yes/No

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To

The Motor Accidents Claims Tribunal,

Special Subordinate Judge, Dindigul,



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N. MALA, J.,

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