



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

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THE HONOURABLE MRS.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.235 of 2015andC.M.A(MD)No.995 of 2017

M.Raymondraj ... Appellant in C.M.A.(MD)No.235 of 2015/Petitioner
... Respondent in C.M.A(MD)No.995 of 2017/Claimant

Vs.

1.S.Chandrasekaran

2.C.Saravanan ... Appellants in C.M.A(MD)No.995 of 2017/
Respondents
... Respondents in C.M.A(MD)No.235 of 2015/
Respondents

Common Prayer : Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2014 in M.C.O.P.No.218 of 2011 on the file of the Motor Accident Claims Tribunal, (IV Additional Sub Judge), Madurai.

For Appellant
in CMA(MD)No.235/2015
For Respondent in CMA(MD)
No.995 of 2017

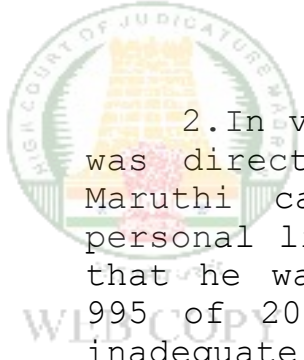
: Mr.P.Athimoolapandian
for Mr.A.K.Baskarapandian

For Appellants
in CMA(MD)No.995/2017
& For Respondent in
CMA(MD)No.235/2015

: Mr.B.Rajesh Saravanan

C O M M O N J U D G M E N T

One M.Raymondraj is the injured claimant in this case. He was riding a two wheeler and was going from North to South in Madurai to Dindigul main road on 16.02.2003 at about 07.30 a.m. The Maruthi car belonging to Dr.S.Chandrasekaran and driven by his son C.Saravanan was coming in the same road from South to North. In a head on collision between the two vehicles, the said Raymondraj suffered serious injuries on his right hand elbow and it was finally amputated. Though, this accident occurred as early as on 16.02.2003, a claim petition was filed only in the year 2010. The Tribunal fixed contributory negligence of 50% on the claimant and awarded a sum of Rs.4,90,566/-.



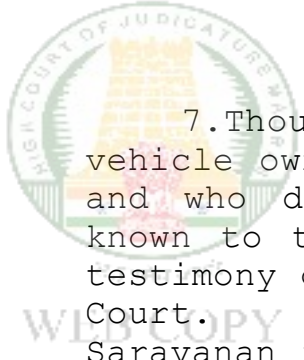
2. In view of the fastening of 50% liability, the vehicle owner was directed to pay a sum of Rs.2,45,283/- with interest. The Maruthi car did not enjoy the insurance coverage. Therefore, personal liability was fastened on the vehicle owner. Contending that he was not at fault, the vehicle owner filed C.M.A.(MD)No. 995 of 2017. Claiming that the quantum of compensation was inadequate, the injured claimant filed C.M.A.(MD)No.235 of 2015 seeking enhancement.

3. Heard the learned counsel on either side in both the appeals.

4. That the accident took place is not in doubt. The only question to be determined is fixing of negligence. The Tribunal fixed contributory negligence on both parties. The learned counsel appearing for the vehicle owner would contend that entire negligence will have to be necessarily fastened only on the injured claimant. The issue necessarily involves going into the facts.

5. Before the Tribunal, the claimant examined himself and also his father. Exs.P1 to P12 were marked on his side. The driver of the Maruthi car was examined as R.W.1. Three other witnesses were examined on the side of the respondents in the claim petition. Exs.R.1 to R.4 were also marked. It is true that F.I.R was registered against C.Saravanan in Crime No.43 of 2003 on the file of the Ambathurai Police Station. It is relevant to note here that the police undertook an investigation, but closed the case as one of mistake of fact. The final report was marked as Ex.R1 before the Tribunal. PW.2 father of the injured claimant was confronted with the final report. The father of the injured claimant admitted that he was aware of the closure of F.I.R as one of mistake of fact. He further admitted that they did not take further steps pursuant thereto.

6. What clinches the case in favour of the owner is the deposition of RW.2, namely, Thirumurugan who was very much present near the scene of occurrence. He was known to both parties. It was the said Thirumurugan, who admitted the injured claimant in the hospital. He also donated blood. These facts are not challenged in the cross examination of the said RW.2. The said Thirumurugan categorically deposed that the injured claimant attempted to over take a container lorry. That is how, he went on the wrong side of the road. The Maruthi car driven by C.Saravanan coming from South to North in Madurai - Dindigul main road on the correct side only (left side). It was the two wheeler ridden by Raymandraj which came on the wrong side. Since he was over taking the container lorry, the accident in question took



7. Though the said Thirumurugan was examined on the side of the vehicle owner, it was he who admitted the injured in the hospital and who donated blood also. Interestingly, Thirumurugan was known to the claimant and is his neighbor also. Therefore, the testimony of the said Thirumurugan inspires the confidence of this Court. This Court therefore comes to the conclusion that Saravanan who drove the Maruthi car was not at fault. The entire negligence has to be necessarily fixed only on the said Raymandraj/claimant.

8. As already pointed out, the police also came to the very same conclusion. I however did not go by the police report. I independently went through the material on record and have come to the conclusion that the car driver was not at fault. The fact that the claimant did not pursue the police case, even though, he was aware that the police closed the case as mistake of fact and put the entire blame on him, speaks volumes about what actually happened. It is again not out of place to mention that the claim petition itself was lodged after 7 years.

9. I therefore have no hesitation in setting aside the award dated 08.12.2014 in M.C.O.P.No.218 of 2011 on the file of the Motor Accident Claims Tribunal, (IV Additional Sub Judge), Madurai.

10. It is again beyond dispute that at the time of accident, the Maruthi car belonging to Dr.S.Chandrasekaran was not enjoyed any insurance coverage. Section 196 of the Motor Vehicle Act, 1988 clearly states that it is an offence to drive the motor vehicle or cause or allow a motor vehicle to be driven in contravention of the provisions of Section 146 of the Motor Vehicle Act. Technically, both Dr.S.Chandrasekaran as well as C.Saravanan can be prosecuted under this provision. No doubt, the police closed the case as one of mistake of fact as regards negligence is concerned. But, the offence under Section 196 of the Act is clearly made out.

11. Faced with this position, the learned counsel appearing for the vehicle owner came forward with an offer. He stated that Dr.S.Chandrasekaran will pay a sum of Rs.3,00,000/- as damages to M.Raymondraj. The payment of the said sum would not mean any admission of liability as regards the negligence or any other heads. It is a mere action to a compensatory fine levied by this Court on the vehicle owner for having committed the offence of allowing an uninsured vehicle to be plying on a public road.

12. The learned counsel appearing for the injured claimant submits that the claimant shall accept the said sum of Rs.3,00,000/- towards full and final settlement of all claims. The learned counsel for the vehicle owner submits that he had deposited a sum of Rs.25,000/- at the time of filing of the



appeal. He has no objection for the injured claimant to withdraw the said amount. The balance amount of Rs.2,75,000/- shall be paid directly to the injured claimant within a period of eight weeks from the date of receipt of copy of this order.

13. In the result, CMA(MD)No.235 of 2015 filed by the claimant is dismissed. CMA(MD)No.995 of 2017 filed by the vehicle owner is allowed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
(IV Additional Subordinate Judge), Madurai.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.B.Rajesh Saravanan, Advocate SR.No. 89439

+1cc to M/S.P.Athimoolapandian, Advocate SR.No. 89575

C.M.A (MD) No.235 of 2015
and

C.M.A (MD) No.995 of 2017
24.11.2017

PSD/SKM

JM/KKR/SAR 1/19.01.2018/4P/6C