

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.3190 of 2005

The Executive Officer,
Town Panchayat
Killai.

.... Appellant/Respondent

Versus

Kuppusamy

.... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 08.03.2004 made in M.C.O.P.No.1185 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Chidambaram.

For Appellant : Mr.G.Thangavel

For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 08.03.2004 made in M.C.O.P.No.1185 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Chidambaram.

2. The brief facts leading to the claim application are as follows :-

On 28.12.2001 at about 7.30 a.m., when the petitioner was walking from east to west on the left side of the road at Killai, the Power Tiller with Tractor belonged to the respondent which was clearing the waste on the road, driven by its driver in a rash and negligent manner without sound horn, hit against the petitioner and the wheels of the Power Tiller ran over the petitioner's forearm due to which, the petitioner sustained grievous injuries including fractures. Subsequently, the petitioner was also treated in the hospital and major surgery was also done to him. He claimed a sum of Rs.15,00,000/- as

compensation for the loss of income, disability, pain and sufferings and medical expenses before the Tribunal.

3. The respondent in the counter statement denied the accident and stated that the petitioner is not entitled to claim compensation for the said accident, which will not come under the purview of the Motor Vehicles Act, hence, the same has to be rejected. The other averments stated in the counter is that it is the negligent attitude of the petitioner which resulted in the accident and the other aspects regarding age, income and disability and the claim of Rs.15,00,000/- were also denied by the respondent.

4. Additional counter has also been filed by the respondent in which, it has been stated that already the respondent has paid a sum of Rs.1000/- on 28.12.2001 and again, a sum of Rs.5000/- on 1.02.2002 and the complaint preferred by the claimant before the Station House Officer, Killai was withdrawn. The Executive Officer of the said village has also acknowledged the same and the petitioner has also signed in the same. Hence, the respondent has stated that the claim application is not maintainable and the claimant is estopped from reopening the matter.

5. The Tribunal has verified the documents relating to the incident and the injuries sustained by the claimant and has given finding that it is the negligent act on the part of the respondent who had driven the vehicle in a careless manner in the public place, which resulted the accident and therefore, the respondent is liable for the accident. The Tribunal has also assessed the injury, occupation of the claimant and the relevant documents regarding the treatment, medical expenses and awarded a sum of Rs.65,000/- as compensation under various heads as under:

Heads	Amount awarded by the Tribunal
For Medical and Transport expenses	15,000.00
For Nourishment and Attender's charges	15,000.00
For Pain and Sufferings	5,000.00
For Loss of Income	30,000.00
TOTAL	65,000.00

Aggrieved against the said award, the respondent has preferred this appeal.

6. In the grounds of appeal, the appellant has stated that the Tribunal without considering the evidence of RW1, awarded a sum of Rs.65,000- without any basis. Further, it is stated that PW1 has not sustained any major injury warranting such huge amount of compensation and PW3 is also not a competent witness to speak about the accident. The sum awarded under the other heads as medical expenses, extra nourishment and permanent disability are also very much aggrieved by the appellant.

7. Heard the appellant side and perused the documents available on record.

8. On the side of the appellant, it is argued that the vehicle involved in the accident is only a Power Tiller with Tractor and there is no purpose for the said Power Tiller to move in any way and cause any negligent act for causing such an injury to the claimant. Hence, the very claim made by the claimant, by stating the fact that he sustained injuries because of the negligent act of the appellant/respondent is not sustainable. It is also argued on the side of the appellant that already, the claimant has received a sum of Rs.1000/- on one occasion and Rs.5000/- on another occasion, the said amount was given by the respondent only on sympathetic grounds and the said act was also recorded in writing and without disclosing all these facts. It is the argument advanced by the appellant that though the facts have been placed before the Tribunal, but, at the time of enquiry of the claim application, the complaint given by the claimant was pending and even during the pendency of the said complaint, the Tribunal has passed an award, which is not sustainable. It is further argued on the side of the appellant that during the time of enquiry, the complaint preferred by the claimant came to be dismissed and the relevant documents regarding the dismissal of the said case was also filed by the appellant. But in the said order, it is stated that the case registered in Crime No.330/2001 was dismissed on 23.07.2003. The appellant has also brought to the notice of this court that the award of the Tribunal came to be passed on 08.03.2004, i.e., prior to the date of dismissal of the complaint. It is also the evidence of the respondent before the Tribunal that the said incident cannot be captioned as accident under the Motor Vehicles Act. Further, the claimant, at the time of incident, was under the influence of alcohol. It is the argument of the appellant that it is only a Power Tractor, which cannot be driven in a negligent or careless manner. It is the claimant, on the particular day, in no way connected with the operation of the Tractor sustained injuries, because of his influence of intoxication, and only out of sympathy, the respondent had paid amounts on two occasions. But, subsequently, the claimant has preferred a complaint with an ulterior motive to get compensation. Further, the complaint preferred by the

claimant was also dismissed by the court. Hence, the argument advanced on the side of the appellant that the incident is not an accident and by which the claimant cannot claim any compensation by filing a petition under the Motor Vehicles Act. The matter was also already argued during the pendency of the case before the Tribunal and in view of the fact that only false claim has been made by the claimant and the criminal case, based on the complaint has been dismissed and the award passed by the Tribunal has to be set aside. Further, stay was granted by this Court and till date, stay was not vacated and there is no representation on the side of the respondent. If really, the respondent is aggrieved over the appeal or the said application, all these years, he would have appeared before the forum and make claim for this award. It is clearly proved that the claimant has already received the sum and because of his attitude and negligence, the incident had happened, for which the appellant is no way responsible. Regarding the argument made by the appellant, no argument was advanced by the respondent and in view of the observation that the vehicle involved in the incident is only Trailor and there is no possibility for operating the same in a negligent manner by way of causing any grievous injury to the claimant. Hence, on a perusal of records and arguments placed by the appellant, this Court of the view that the award passed by the Tribunal warrants interference.

9. Accordingly, this Civil Miscellaneous Appeal is allowed setting aside the award passed by the Tribunal. No costs. The appellant is also permitted to withdraw the amount already deposited to the credit of M.C.O.P.No.1185 of 2003 before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Additional District Judge, Chidambaram.
2. The Section Officer, V.R.Section, High Court, Chennai.

+1 cc to Mr.G.Thangavel, Advocate Sr.No.72962

CMA.No.3190 of 2005

CP(CO)
CSL/02.04.2019