

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.305 OF 2018

J.Jayaprakash

... appellant/Petitioner

versus

1.M/s.N.T.Rhamathulla Khan & Associates,  
no.3B/7, Kalandar Street,  
Kanchipuram  
(set exparte in the trial Court)

2.Bajaj Allianz General Insurance Co. Ltd.,  
O.d No.276, 277, New 497 and 498  
Isana Kattima Buildings,  
5<sup>th</sup> Floor, P.H. Road,  
Opp. Tamil Nadu Pollution Control Board,  
Arumbakkam, Chennai 106.

3.The Asst. Commissioner,  
Traffic Investigation Wing,  
Poonamallee

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 30.11.2017 in MACT.O.P.No.4217 of 2013 on the file of II Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai. सत्यमेव जयते

For appellant : Ms.P.T.Saleem Fathima

For respondents : Mr.T.K.Prem Kumar, for R-2

1<sup>st</sup> respondent set exparte.

3<sup>rd</sup> respondent - No Appearance

J U D G M E N T  
(made by K.K.SASIDHARAN, J.)

The claim petition filed by the appellant in M.C.O.P.No.4217 of 2013, before the Motor Accident Claims Tribunal, Chennai, was dismissed by the trial Court on the

ground that the accident was the creation of the appellant and that there was no negligence on the part of the driver of the vehicle owned by the first respondent. Feeling aggrieved by the order dismissing the original petition, the unsuccessful petitioner is before this Court.

2. The motorcycle driven by the appellant met with an accident at about 22 hours on 4 July 2013 at Avadi-Poonamallee Road. The bus bearing Registration No.TN 21 AE 7369 made an attempt to turn and as a result, the vehicle driven by the appellant hit against the said vehicle. The appellant sustained multiple injuries, resulting in his admission, first at Kilpauk Medical College Hospital and thereafter at Sri Ramachandra Medical Centre, Porur.

3. The appellant filed a claim petition before the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai. The claim was contested by the Insurance Company. The Tribunal found that the complaint was preferred only by the driver of the bus. As per the complaint, the bus was parked on the side of the road for taking the passengers. The driver heard a noise and found that the motorcycle driven by the appellant hit at the backside of the bus, resulting in causing injuries to him. The police, after investigation, closed the FIR as "action dropped".

4. The Tribunal was of the view that there was no evidence produced by the appellant to show that the driver of the bus was at fault. The Tribunal therefore dismissed the claim petition.

5. The materials available on record including the sketch produced by the appellant shows that the vehicle owned by the first respondent was parked on the road and that was the cause for the accident. The very same police prepared another sketch and it was marked on the side of the respondent. In the said sketch, place of the accident was changed to make it appear as if the appellant was at fault.

6. The earliest document was Ex.P-2. It was a sketch prepared by the police. The said sketch speaks itself about the cause of the accident. It was the driver of the vehicle owned by the first respondent, who was at fault by parking the bus on the road without signal. There was an attempt made by the police at a subsequent occasion to shift the burden on the appellant. The same is evident by the sketch marked on the side of the second respondent as per Ex.R-2. The copy of the sketch marked as Ex.P-2 clearly shows that the driver of the vehicle owned by the first respondent alone contributed for the accident in question. This vital aspect was not considered by the learned trial Judge. We are therefore of the view that the finding given by the learned trial Judge on the question of negligence is perverse

and the same is liable to be set aside. We hold that the driver of the vehicle owned by the first respondent alone was at fault and there was no contributory negligence on the part of the appellant.

7. Since the claim petition was dismissed only on the ground that the appellant was at fault, the Tribunal was not having an opportunity to consider the matter on merits. We are therefore of the view that the quantum of compensation must be decided by the Tribunal on merits. The Tribunal is directed to dispose of the claim petition as expeditiously as possible and in any event within a period of four months from the date of receipt of a copy of this judgment.

8. The civil miscellaneous appeal is allowed to the extent indicated above. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tar

To

The II Judge, Motor Accident Claims Tribunal,  
(Court of Small Causes), Chennai.

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.65215  
+1cc to Mr.T.K.Premkumar, Advocate, S.R.No.65301

C.M.A.No.305 OF 2018

GJ(CO)  
CS(02/11/2018)

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