



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).Nos.263 and 264 of 2018 and
CMP(MD).No. 3804 of 2018 in CMA(MD).No.263 of 2018
and
CMP(MD).No. 3805 of 2018 in CMA(MD).No.264 of 2018

Sankaralingam : Appellant in both CMAs

Vs.

S.Marimuthu : 1st respondent in CMA(MD).No.263/2018
M.Pari : 1st respondent in CMA(MD).No.264 /2018
Ganesan : 2nd respondent in both CMAs

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree passed by the Motor Accidents Claims Tribunal / Special Court for MCOP cases, Madurai in MCOP.Nos.911 and 913 of 2013, dated 18.02.2015.

For Appellant : Mr.RM.Arun Swaminathan in both CMAs
For R1 : No appearance

COMMON JUDGMENT

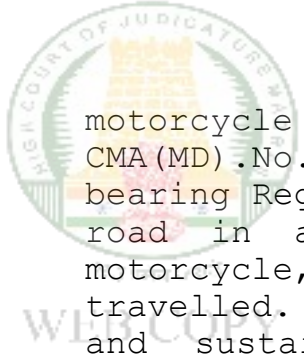
These Civil Miscellaneous Appeals are filed against the Judgment and Decree dated 18.02.2015, passed in MCOP.Nos.911 and 913 of 2013 respectively, on the file of the Motor Accidents Claims Tribunal / Special Court for MCOP cases, Madurai.

2. Since both the Civil Miscellaneous Appeals arise out of the same accident and the parties are one and the same and the issues are interlinked, these Civil Miscellaneous Appeals are disposed of by way of this common Judgment.

3. The first respondent in both the appeals are claimants. They have filed claim petition claiming a sum of Rs.50,000/- and Rs.3,00,000/- respectively as compensation, for the injuries sustained by them in the accident that occurred on 14.06.2011. The appellant herein is the owner of the vehicle.

<https://hcservices.ecourts.gov.in/hcservices/>

4. According to the first respondent in both the appeals, while the first respondent in CMA(MD).No.263 of 2018 was riding



motorcycle bearing Regn. No.TN 59 AX 8732 with first respondent in CMA(MD).No.264 of 2018 as pillion rider, one TVS Suzuki motorcycle bearing Regn. No. TN 59 H 9517 came in the opposite direction of the road in a rash and negligent manner and dashed against the motorcycle, in which, the first respondent in both the appeals travelled. Due to the same, both the first respondents fell down and sustained multiple injuries. According to them, the appellant herein, who is the owner of the vehicle did not furnish details of the Insurance Company and they were not aware of details of insurance.

5. The first respondents in both the appeals sent notice through Advocate to the appellant on 21.08.2012. The appellant sent a reply on 29.08.2012 stating that he sold the vehicle to the second respondent herein and did not furnish any particulars of Insurance Company. In view of the same, the first respondents in both the appeals filed claim petition against the appellant and second respondent claiming compensation as mentioned in the claim petition.

6. The appellant filed counter statement in both the MCOPs and contended that he sold the vehicle to the second respondent on 14.02.2006 and he is not the owner of the vehicle on the date of accident and therefore, he is not liable to pay any compensation.

7. The second respondent herein remained ex parte before the Tribunal in both the claim petitions.

8. Before the Tribunal, the first respondents in both the appeals examined themselves as PW.1 and PW.2 respectively and one Dr.Ravichandran was examined as PW.3 and 12 documents were marked as Exs.P1 to P12. The appellant examined himself as RW.1 and marked one document as Ex.R1.

9. The Tribunal considering the pleadings, oral and documentary evidence held that the appellant is liable to pay compensation and awarded a sum of Rs.15,000/- and Rs.1,74,200/- as compensation to the first respondents in both the appeals respectively.

10. Against the said Award, the appellant has filed the present appeals.

11. Notice was served on the first respondents in both the appeals in SR stage and Mr.M. Ponniah, learned counsel entered appearance. Today, though his name is printed in the cause list, there is no representation on behalf of the first respondents in both the appeals. Though notice was served through substituted service by effecting paper publication to the second respondent and his name is also printed in the cause list, there is no representation on behalf of the second respondent either in person or through his counsel.



12. The learned counsel appearing for the appellant made his submissions on merits.

13. I have heard the learned counsel appearing for the appellant.

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14. From the materials available on record, it is seen that in the First Information Report, it has been stated that the complaint has been given by Marimuthu, first respondent in CMA(MD). No.263 of 2018 against one Kannan. According to the first respondents, the said Kannan was riding the vehicle in question in a rash and negligent manner at the time of accident and dashed against the vehicle, in which, both the first respondent were travelling and hence, the said Kannan is responsible for the accident. The said Kannan was not impleaded as party in MCOPs.

15. According to the appellant, he is not owner of the vehicle at the time of accident, as he sold the vehicle to second respondent on 14.02.2006, five years earlier to the accident. The appellant has produced delivery note to substantiate his contention. In view of the above fact and First Information Report was lodged against one Kannan, who drove the appellant's vehicle at the time of accident, he is necessary party to decide the claim of the first respondents in both the appeals. The Tribunal failed to consider this fact.

16. In view of the same, the Award of the Tribunal is set aside and both the Civil Miscellaneous Appeals are remanded back to the Tribunal for fresh consideration. The first respondents in both the Civil Miscellaneous Appeals are directed to implead the said Kannan, against whom, they have lodged a complaint, as third respondent in the claim petitions. On such impleadment, the Tribunal is directed to dispose of the claim petitions, within a period of three months, thereafter, on merits and in accordance with law.

17. With the above direction, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(SAR-IV)



The Special Subordinate Judge,
Special Court for MCOP cases,
Motor Accidents Claims Tribunal,
Madurai.

Copy To:-

The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC TO Mr.R.M. ARUN SWAMINATHAN, ADVOCATE IN SR No.80218

TRP

TE/SKN/SAR-IV : 21/12/2018 : 4P/5C

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