



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMA(MD) No.593 of 2018
and C.M.P. (MD) No. 6859 of 2018

Savithiri

.. Appellant/2nd Respondent
-Vs-

1.R.Arunkumar
2.J.Revathi

..1st Respondent/Petitioner
..2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 10.04.2017 made in M.C.O.P.No.902 of 2014 on the file of the Special Sub Court, Thanjavur, MACT.

For Appellant : Mr.A.Haja Mohideen
For R2 : Mr.P.Edin Brough

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order dated 10.04.2017 made in M.C.O.P.No.902 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Thanjavur.

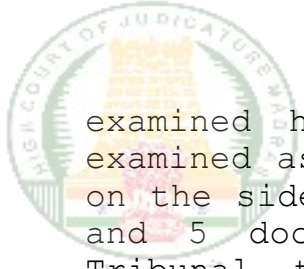
2. The appellant is the second respondent. The Claim Petition is filed by the first respondent herein. According to the first respondent, on 16.03.2014 at 12.15p.m, in Trichy Road at Thanjavur, while he was travelling in a Three Wheeler, the appellant drove the Indica Car, bearing Registration No.TN-07-AW-9102, in a rash and negligent manner and dashed against the Three Wheeler, in which, the first respondent sustained injuries and filed the Claim Petition, claiming compensation for the injuries.

3. According to the first respondent, the appellant was the driver of the Car. The second respondent is the owner of the Car and both are liable to pay compensation.

4.The second respondent in the counter statement contended that she has sold the Car to the appellant through one Raja, Mechanic, and has signed all the necessary documents and handed over the same to the appellant. On the date of accident, the second respondent is not the owner of the Car and the appellant is the owner and the second respondent is not liable to pay any compensation.

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5. Before the Tribunal, the first respondent/claimant



examined himself as P.W.1 and one Doctor Rathinasabhabathi was examined as P.W.2 and marked 14 documents as Ex.P.1 to Ex.P.14 and on the side of the second respondent, she examined herself as R.W.1 and 5 documents were marked as Ex.R.1 to Ex.R.5. Before the Tribunal, the appellant remained ex-parte.

6.The Tribunal, considering the pleadings of the respondents 1 and 2 and oral and documentary evidence and considering the document marked as Ex. R2, held that the appellant was the owner of the vehicle on the date of accident and therefore, the appellant alone is liable to pay compensation. The Tribunal, considering the nature of injuries based on the evidence let in by the first respondent, awarded a sum of Rs.2,18,500/- as compensation to the first respondent.

7. Aggrieved by the said award, the appellant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the appellant was not the owner of the vehicle on the date of accident. The second respondent alone was shown as the owner in the Registration Certificate. The Tribunal failed to consider this aspect and no evidence was let in before the Tribunal to prove that the appellant was the owner. The appellant is the lady and suffered with 50% disability and she is not capable of driving the vehicle, due to her disability. No evidence was let in before the Tribunal to prove that the appellant only drove the Car at the time of accident. No eye witness was examined. The appellant was acquitted in the criminal case. In any event, the compensation awarded is excessive. The Tribunal has awarded the compensation mechanically. The appellant is not owner of the vehicle on the date of accident and only the second respondent is the owner of the Car.

9. In support of his contention, the learned counsel for the appellant relied on the judgment reported in 2018 (2) CTC 91 in Naveenkumar Vs. Vijay Kumar and others and submitted that the appellant was not given an opportunity to put forth his submission before the Tribunal.

10.The learned counsel for the appellant submitted that the appellant is not questioning the quantum of compensation awarded. She is questioning only the liability fixed on her and notice may be dispensed with to the first respondent.

11. Per contra, the learned counsel appearing for the second respondent contended that the appellant drove the vehicle in a rash and negligent manner and caused the accident. After the accident, she left the place of occurrence by getting into a bus coming on that way. The First Information Report was registered only against the appellant. The learned counsel for the second respondent further contended that the second respondent has sold the vehicle to the appellant on 11.12.2013 and signed all the necessary papers for transfer of ownership and handed over all the documents to the



appellant through one Raja, Mechanic and the appellant has not got the ownership transferred in her name. The second respondent has proved the same by marking the documents and also let in oral evidence and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant and the second respondent and perused the materials available on record.

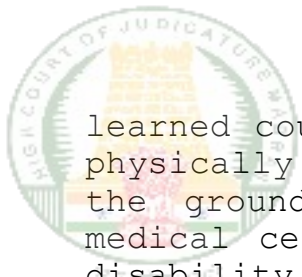
13 The contention of the learned counsel for the appellant that only the second respondent is shown as the owner in the Registration Certificate and as per the judgment of the Hon'ble Apex Court in reported in 2018 (2) CTC 91 in Naveenkumar Vs. Vijay Kumar and others, second respondent is owner has considerable force.

14. The Hon'ble Apex Court, considering the definition of the owner in Sections 2(30) and 50 of the Motor Vehicles Act, held that a person, in whose name the registration of the vehicle stands at the time of accident, is the owner of the vehicle. The Hon'ble Apex Court has held that the victim or the legal heirs of the deceased in an accident, cannot be driven to necessity of tracing ownership, when the person, in whose name the vehicle stands, takes a stand that he has already sold the vehicle. In view of the same, the award of the Tribunal, holding that the appellant is the owner of the vehicle and she alone is liable to pay compensation, is set aside.

15. As far as liability of the appellant is concerned, the first respondent, has stated that the appellant drove the vehicle in a rash and negligent manner and caused the accident. Hence, the first respondent lodged the complaint against the appellant. Before the Tribunal, the first respondent deposed to that effect and marked the First Information Report. First respondent is eye witness and he is claiming compensation for the injuries. The appellant remained ex-parte and did not let in any contra evidence before the Tribunal. The appellant has not given any reason for not appearing before the Tribunal to rebut the claim of the first respondent that the appellant drove the Car in a rash and negligent manner and caused the accident.

16. The contention of the learned counsel for the appellant that the appellant was acquitted in the criminal case has no relevance to decide the liability of the appellant to pay the compensation claimed in a Motor Accidents Claims Original Petition. The judgment of the criminal court is not binding on the Tribunal or civil court. The Tribunal or the Civil Court can only consider the same in arriving at conclusion, as the test to find out negligent in claims cases is only preponderance of probabilities, while it is a strict proof of evidence in the criminal proceedings.

17. The learned counsel for the appellant filed the copy of the judgment delivered in S.T.C.No.5557 of 2014, by the learned Judicial Magistrate No.3, Thanjavur. A reading of the said judgment shows that the appellant was acquitted giving benefit of doubt. The



learned counsel for the appellant contended that the appellant is a physically disabled person and she cannot drive the Car. However, in the grounds of appeal no such ground is taken and further no medical certificate was produced to show that due to her physical disability, she cannot drive any Car.

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18. The Hon'ble Apex Court in the judgment dated 03.07.2017, made in C.A.Nos.8395 and 8396 of 2017 in Santlal Vs. Rajesh and others held that the liability is joint and several of owner, driver and insurer. The relevant portion reads as follows:

"Accordingly, in view of the answer given to reference by the three Judge Bench of this Court in Mukund Dewangan Vs.Oriental Insurance Co. Ltd., etc., (Civil Appeal No.5826 of 2011), these appeals have to be allowed and are hereby allowed. The right given to the insurer to recover amount from owner is hereby set aside. The liability is held to be joint and several of owner, driver and insurer".

19. In view of the ratio laid down in the said judgement, the appellant, who was the driver of the vehicle at the time of accident, is jointly and severally liable to pay the compensation along with the second respondent.

20. As far as the quantum of compensation is concerned, the learned counsel appearing for the appellant submitted that the compensation awarded by the Tribunal is just and proper and he has not challenged the said compensation.

21. For the above reason, the Civil Miscellaneous Appeal is partly allowed, setting aside the portion of the award of the Tribunal holding that the appellant alone, as the owner of the vehicle, is liable to pay the compensation. The said portion of the award is modified that the second respondent, as the owner as per Sections 2(30) and 50 of the Motor Vehicles Act,1988, and the appellant, as the driver of the vehicle, are jointly and severally liable to pay the compensation. It is open to the first respondent to execute the award amount so awarded either against the appellant or against the second respondent. No costs. Consequently, connected C.M.P.(MD) No.6859 of 2018 is closed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar(CS-II)

To

1.The Special Sub Court, Motor Accidents Claims Tribunal, Thanjavur,
2.The Record Keeper, V.R. Section,

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

Madurai Bench of Madras High Court, Madurai.(2 copies)



+1cc to Mr.P.EDIN BROUGH, Advocate, SR.No. 83646
+1cc to Mr.A.HAJA MOHIDEEN, Advocate, SR.No.82992

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and C.M.P. (MD) No. 6859 of 2018
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