



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.M.A(MD)No.1001 of 2013

K.Balamurugan : Appellant / Respondent

Vs.

D.Ganesan : Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 31.10.2012, passed in MCOP No.625 of 2012, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Dindigul.

For Appellant : Mr.I.Robert Chandrakumar
For Respondent : Mr.M.E.Ilango

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 31.10.2012, passed in MCOP No.625 of 2012, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Dindigul.

2. The appellant herein is the sole respondent in MCOP No.625 of 2012, on the file of the Motor Accident Claims Tribunal (Special Sub-Judge Court), Dindigul. The respondent herein is the claimant and filed the above claim petition under Sections 140 & 166 of the Motor Vehicles Act, claiming restricted compensation for Rs.9,00,000/-, on account of the injuries sustained by him in a road accident that took place on 01.01.2010 at 12.05 a.m.

3. The case of the claimant, before the Tribunal, is that while the claimant was riding his bicycle from west to east, in the extreme left side of the road near the city hospital, Dindigul, the respondent's TVS Victor Bike, bearing Registration No.TN-59-V-6169, which was driven by its driver, came behind the claimant with alarming speed and dashed against the claimant's bicycle and due to the impact, the claimant sustained grievous injuries and the accident occurred due to rash and negligent driving of the two wheeler of the respondent, by its rider and hence, the respondent is liable to pay compensation. FIR was also registered against one Karthikeyan, who drove the vehicle on the date of the accident in Crime No.5 of 2010 under Sections 279 & 337 of IPC., by the Taluk



Police Station on 01.10.2010, on the basis of the written complaint given by the claimant / injured, while he was under treatment in the city hospital, Dindigul at about 7.15 Hrs.

4. The respondent in the claim petition contended by filing counter statement alleging that though the respondent / claimant pleaded guilty, the manner of the accident and negligent of the claimant is to be noted, since the accident had occurred only because of the negligent act of the claimant and hence, the respondent is not liable to pay any compensation for the alleged accident.

5. On the side of the claimant P.Ws.1 & 2 were examined. Exs.P1 to 6 were marked. On the side of the respondent, no one was examined, as witness and also no documentary evidence was produced.

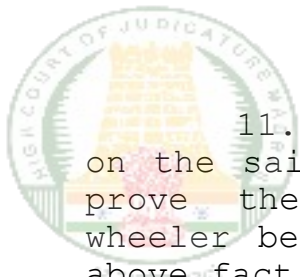
6. P.W.1 is the claimant, who injured in the accident. P.W.2 is the Doctor, who assessed the permanent disability, after examination of the claimant on 15.10.2012.

7. The Tribunal held that in the accident occurred and the claimant sustained injuries only due to rash and negligent driving of the rider of the motor cycle belonged to the respondent and the respondent is liable to pay compensation to the claimant. The Tribunal has awarded and directed the respondent / vehicle owner to pay Rs.1,09,174/-, as compensation, with interest at the rate of 7.5% per annum from the date of petition till the date of realization with costs.

8. Aggrieved by the Award of compensation, the respondent in the claim petition / vehicle owner filed the present Civil Miscellaneous Appeal before this Court.

9. The primary contention of the appellant in this appeal is that the appellant is not the owner of the vehicle and there is no evidence to show that the offending vehicle belonging to the appellant herein.

10. The respondent / claimant has pleaded in his claim petition that the appellant / respondent in the claim petition is the owner of the two wheeler TVS Victor, bearing Registration No.TN-59-V-6169 and the said two wheeler was driven by one Karthikeyan on the date of accident in a rash and negligent manner and dashed against the claimant and caused injuries. The appellant did not specifically deny in his counter statement that he is not the owner of the said two wheeler, but he has admitted and stated that the person, who drove the above said vehicle was the driver of the appellant and the accident occurred only because of the negligent of the claimant. Hence, the appellant himself categorically admitted in his counter that he is the owner of the vehicle, which caused the accident. The claimant is the victim due to the accident.



11. Though the appellant herein has not denied his ownership on the said two wheeler, the appellant has not taken any steps to prove the fact that he is not the owner of the said offending two wheeler before the Tribunal. The appellant is bound to prove the above fact. The appellant has not chosen to examine even himself as witness before the Tribunal. No evidence was let in to show that the offending vehicle was insured and the policy was in force on the date of the accident.

12. Non denial of ownership upon the offending two wheeler in the counter statement and also non-examination of the appellant before the Tribunal would amount to admission of the ownership, as contended by the counsel for the respondent herein. Hence, it is proved that the appellant is the owner of the offending vehicle, in the absence of any other acceptable evidence. In the above stated circumstances, this Court holds that the Tribunal has rightly concluded that the respondent / appellant herein is the owner of the offending two wheeler and he is alone responsible for the payment of compensation. The medical expenses awarded by the Tribunal is based on medical bills.

13. In the result, this Civil Miscellaneous Appeal stands dismissed, confirming the Award, dated 31.10.2012, passed in MCOP No.625 of 2012, by the Motor Accident Claims Tribunal, Special Subordinate Court, Dindigul. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Special Subordinate Judge,
Motor Accident Claims Tribunal
Special Subordinate Court,
Dindigul.

COPY TO:

The Record Keeper, (2 Copies)
Vernacular Records Section
Madurai Bench of Madras High Court.
Madurai.

+1CC TO Mr.I.Robert Chandrakumar, Advocate, SR No.56369

Orders Made in
C.M.A (MD) No.1001 of 2013
19.03.2018