

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON

27.09.2018

DELIVERED ON

29.01.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2058 of 2007
and M.P. No. 1 of 2007

N.K. Thirumoorthy

..Appellant

Vs.

1. Lakshmi
2. P.V. Manohar
3. The Oriental Insurance Co.Ltd.,
Gobichettipalyam,
Erode District.
(Notice to 2nd respondent given up
in this CMA)

..Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 04.08.2005 passed in MCOP. No. 72 of 2002 on the file of the Motor Accidents Claims Tribunal/ I Additional Sub Court, Gobichettipalyam.

For Appellant : Mr. N. Manokaran

For Respondents : Mr.K. Govi Ganesan- R1
: Mr. S. Manohar - R3

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree 04.08.2005 passed in MCOP. No. 72 of 2002 on the file of the Motor Accidents Claims Tribunal/ I Additional Sub Court, Gobichettipalyam.

Brief facts leading to the claim application are as follows;

2. On 21.06.2000 at about 5.30 am when the petitioner along with her husband were proceeding to the bus stop, at the time a vehicle bearing registration number TN 4100 which was proceeding from west to east in a rash and negligent manner and hit against the petitioner, as a result, the petitioner was thrown

away at a distance and also sustained severe injuries in both her legs. The petitioner was given treatment in various hospitals for severe injuries. Hence, She claimed a sum of Rs.5,00,000/- as compensation under various heads.

3. The 2nd respondent in the counter statement has denied the mode of accident as stated by the petitioner. It is also stated that the said accident occurred only due to the negligence on the part of the petitioner, who crossed the road without noticing the vehicles coming in the opposite directions. Hence, no way the driver of the vehicle is responsible for the said accident. The other aspects with regard to the compensation claimed under nature of injury, disability were also denied by the 2nd respondent as excessive and without any basis. The other averment made in the counter statement is that this respondent is not a owner of the vehicle on the date of the accident and he sold the said vehicle on 20.02.1996 for Rs.1,40,000/- to one Balu @ Veerappan of Bhavani. Hence the said Balu @ Veerappan is the owner of the alleged vehicle TN 41000 at the time of the accident and he is the necessary to the petition and therefore this respondent is not liable to pay the compensation claimed by the petitioner.

4. The tribunal after analysing the evidence and documents has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the said vehicle. It is also observed by the tribunal that the documents relating to the said vehicle shows that the vehicle which caused the accident was sold to one Balu @ Veerappan, but the documents are standing in the name of 2nd respondent. This fact was also admitted by the RW1. The said vehicle was also not insured with the 3rd respondent at the time of the accident. Hence the tribunal has given a finding that the respondents 1 & 2 alone are responsible to pay compensation and accordingly awarded a sum of Rs.1,42,800 as compensation.

5. Aggrieved against the said judgment and decree, the 2nd respondent/owner of the vehicle has preferred this Appeal challenging the liability.

6. It is stated in the grounds of appeal that the accident took place on 20.06.2000, whereas, the said vehicle has been sold to one Balu @ Veerappan as early on 20.12.1996 and hence on the date of accident, the ownership of the vehicle has been transferred to one Balu @ Veerappan and therefore, the appellant/2nd respondent is not the owner of the vehicle. It is also stated that it is the mandatory duty on the part of the transferee to report the factum of transfer to the concerned RTO and get the vehicle transferred in his name, but this was not done by the transferee. It is further stated that the tribunal

has failed to note the judgment reported in 1991 ACJ 300, wherein the Hon'ble High Court has held that the transferee is required to seek registration of the vehicle in his name. Or else, the liability should have been fixed both on transferor and transferee. It is the further grievance raised by the appellant that the tribunal has not noted that the transferor has no obligation to compel the transferee to transfer the records in his name. The tribunal has also not properly considered as to the liability to be fixed on the actual owner and the registered owner. It is also stated that sale was completed even before the transfer was effected in the registration certificate. The failure on the part of the transferee to report the same before the registering authority is liable for levy of penalty and hence the transferee alone is liable to pay compensation to the victim and hence the judgment and the decree passed by the tribunal has to be set aside.

7. Heard both sides and perused the documents available on record.

8. It is argued by the appellant that on the date of the accident this appellant/2nd respondent was not a owner of the vehicle bearing registration No. TN 4100 and the said vehicle was already sold to one Balu @ Veerappan for Rs.1,40,000/- as early as on 20.12.1996. Since the said vehicle was sold, this appellant cannot be considered as owner to the said vehicle and the transferee namely Balu @ Veerappan has to be added as necessary party in the claim. It is also argued by the appellant that when the said vehicle was sold to one Balu @ Veerappan and relevant documents and sale receipts also produced before the tribunal, this appellant/2nd respondent is no way liable for the accident as he was not the owner of the said vehicle at the time of the accident.

9. The other arguments advanced by the appellant is that, it is the responsibility of the transferee to inform to the concerned registering authority with regard to the transfer of the vehicle and also endorsements, if any with regard to the ownership. Hence, the transferor who sold the Car long back is no way responsible for the accident.

10. On perusal of Ex.P5, Motor Inspector's report, it is seen that driver of the vehicle was having valid driving license at the time of the accident and it is also mentioned that N.K.Thirumurthy as a registered owner for the said vehicle and the said vehicle was not insured with the 3rd respondent/Insurance Company. Though the said N.K.Thirumurthy has deposed that he is not a owner of the vehicle at the time of the accident, he had sold his vehicle to one Balu @ Veerappan 4 years ago, in his cross examination he admits that as on date

the vehicle's RC Book of the said vehicle stands in his name. In view of the above statement the tribunal has considered him as owner of the vehicle as per the principle laid down in the judgement reported in A.I.R. 1970 (Bombay) Page 337. "1970 ACJ page 334 Civil Ready Reference Action to be initiated against Registered Owner"

11. As per Ex.P5- Motor Vehicle Inspector's report, the driver of the vehicle was not holding the valid and effective driving license at the time of accident and also no insurance was in force with the 3rd respondent/Insurance Company, hence the finding arrived at by the tribunal that the accident had occurred only due to the negligence on part of the driver and fixing the liability on the both the driver and owner of the vehicle is very much proper and reasonable and does not require any interference.

12. It is seen from the award that the tribunal has rightly considered the age of the petitioner at 40 and her occupation as coolie and assessed the monthly income at Rs.1,000/- against her claim at Rs.1,500/-, which is reasonable and the multiplier applied by considering the age of the petitioner is also proper. Though, the evidence of PW3 was to that effect that petitioner has sustained 60% disability, the tribunal has taken the disability at 40% and calculated the loss of income at Rs.52,800/-, which is also proper, hence this Court confirms the same. The sum awarded at Rs.84,000/- for medical expenses by considering the Medical Bills - EX.P8 is also proper and does not require any change and the sum of Rs.3,000/- each awarded under the heads Pain and Suffering and Nourishment also found reasonable while considering the period of treatment and the nature of injury sustained by the claimant, hence the said amount is confirmed. In total, the award by the passed by the tribunal is proper and justifiable and does not require any interference.

13. In the result, the award passed by the tribunal in MCOP. No. 72 of 2002 dated 04.08.2005 is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1) I Additional Sub Court,
Motor Accidents Claims Tribunal,
Gobichettipalyam.

copy to: The Section Officer,
VR Section, High Court, Madras.

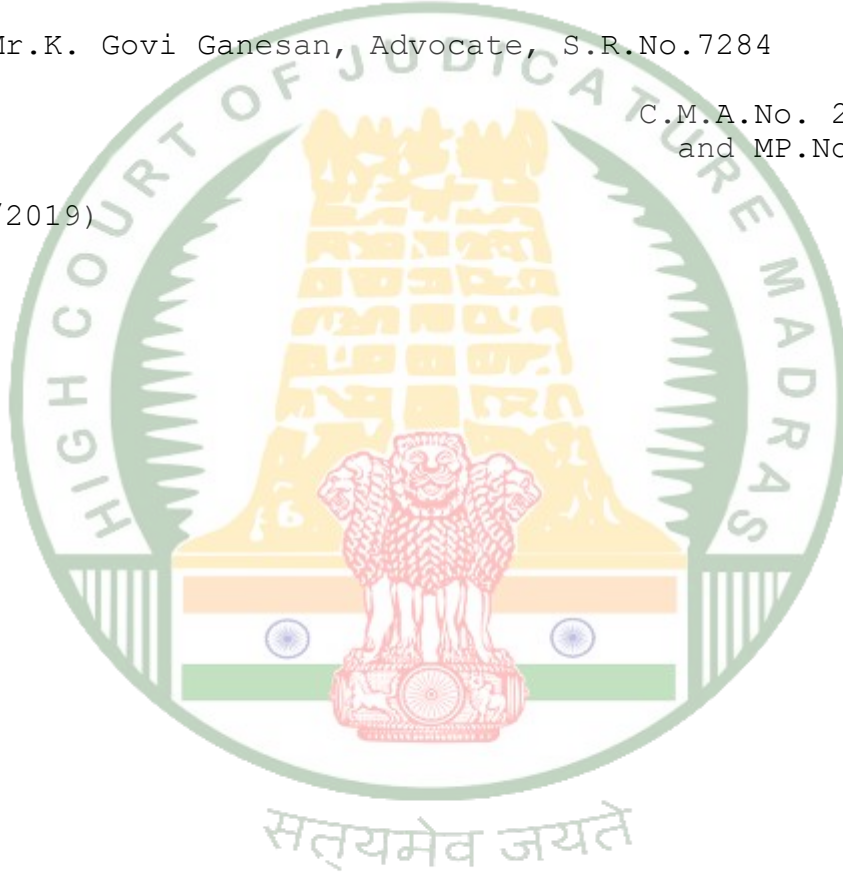
+1 cc to Mr. N. Manokaran, Advocate, S.R.No.7291

+1 cc to Mr. S. Manohar, Advocate, S.R.No.7104

+1 cc to Mr.K. Govi Ganesan, Advocate, S.R.No.7284

C.M.A.No. 2058 of 2007
and MP.No. 1 of 2007

SSV(CO)
SSM(07/05/2019)



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