

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
13.03.2019	25.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1116 of 2011

N.C. Manoharan

..... Appellant

Vs.

1. M.K. Wilson

2. The Oriental Insurance Co. Ltd.,
rep. by its Division Manager,
Divisional Office, IIIrd Floor,
Maheswari Building, M.C. Road,
Trichur - 680 001.

.....Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.1588 of 2006 dated 25.11.2010 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.V. Karthikeyan

(For V. Nicholas)

For Respondent-1 : Mr. M. Krishnamoorthy

For Respondent-2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal arises out of the Judgment and Decree dated 25.11.2010 made in M.C.O.P.No.1588 of 2006 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Krishnagiri. (for brevity, "the Tribunal").

2. The claimant/petitioner is the appellant herein preferred this appeal against the dismissal order passed in M.C.O.P. No.1588 of 2006 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Krishnagiri.

3. The brief facts of the case are as follows:

A1. On 20.09.2003 at about 12.00 noon the petitioner was proceeding in the Bajaj Boxer AR Motor Cycle bearing Registration No.KA-05-EN-9628 from Bangalore to go to Chinnaparavakkal Village in Vanniyambadi to Ambur M.C. Road at Solar Village. A Swaraj Mazda Mini Van bearing Registration No.KL-9-S-4868, which was proceeding in front of the said Boxer AR Motor Cycle belonging to the first respondent and insured with the second respondent was driven by its driver by name Unnikrishnan in a rash and reckless and negligent manner, without following any rules of the road, without sounding horn and without applying any light signals all of sudden stopped his Swaraj Mazda Mini Van on the middle of the road. The petitioner/appellant herein who was proceeding in the Bajaj Boxer AR Motor Cycle applied brake to avoid hit behind the said Swaraj Mazda Mini Van, whereby the said Bajaj Boxer AR Motor Cycle hit behind the Swaraj Mazda Mini Van and caused the accident. As a result, the petitioner fell down and sustained grievous injuries. On a complaint, a criminal case was registered against the petitioner in Cr. No.662/2003 of Ambur Kiramiya Police.

A2. First respondent/owner of the Swaraj Mazda bearing Registration No.KL.8-S-4868 remained exparte and Insurance Company/second respondent has filed the counter statement.

4. Before the Tribunal, the petitioner/claimant was examined as P.W.1 and occurrence witness was examined as P.W.2 as well as Doctor was examined as P.W.3. Further, Ex.P1 to Ex.P14 have been marked. On behalf of the respondent/Insurance Company, R.W.1 was examined.

5. On consideration of both oral and documentary evidence adduced before the Tribunal, the Tribunal has held that the petitioner/claimant is a tort-feaser who also admitted before the Tribunal that a fine of Rs.1000/- has been paid for his negligence driving. Hence, involvement of the respondent vehicle is not true. Accordingly, the Tribunal has dismissed the Claim petition in M.C.O.P. No.1588 of 2006. Hence, this appeal.

6. The learned counsel for the appellant has called my attention to Ex.R1, Charge Sheet to show that involvement of the vehicle of the first respondent for the cause of the said accident.

7. Heard, the learned counsel for the Insurance Company.

8. It is seen from the records that as per Ex.P1, F.I.R. said to have been given by Mr.K.Purusothaman who is relative of P.W.1, petitioner/claimant that due to rash and negligence driving of the claimant/petitioner namely, Mr. N.C. Manoharan, went and dashed against the first respondent's vehicle from behind thereby the said accident had taken place which has been clearly shown under Ex.R1, Charge sheet, filed by the R.W.1. Hence, the Tribunal has rightly come to the conclusion that as P.W.1, petitioner/claimant has paid a fine of Rs.1000/- to Judicial Magistrate, Ambur, for his negligence driving, on his own negligence, the claimant went and dashed against the vehicle from behind.

9. It is stated that as per Motor Vehicle Report, Ex.P2 and Ex.P4, some damages has been noticed in the two wheeler of the petitioner/claimant. However, there is no damages on the first respondent's vehicle. It remains to state that since the petitioner/claimants also admitted before the Tribunal that a fine of Rs.1000/- has been paid for his negligence driving on the date of accident. While so, it is admitted fact that there is no negligence on the part of the first respondent vehicle neither owner of the vehicle nor Insurance Company is liable to pay compensation to the petitioner/appellant herein. The petitioner/appellant herein sustained injuries on his own accord. Hence, the petition has been rightly rejected by the Tribunal and it does not warrant any interference at this stage.

10. In the result, the appeal is dismissed. Accordingly, the award passed by the Tribunal is hereby confirmed. There shall be no order as to costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

lbm

To:

1.The Motor Accident Claims Tribunal and
Chief Judicial Magistrate, Krishnagiri.

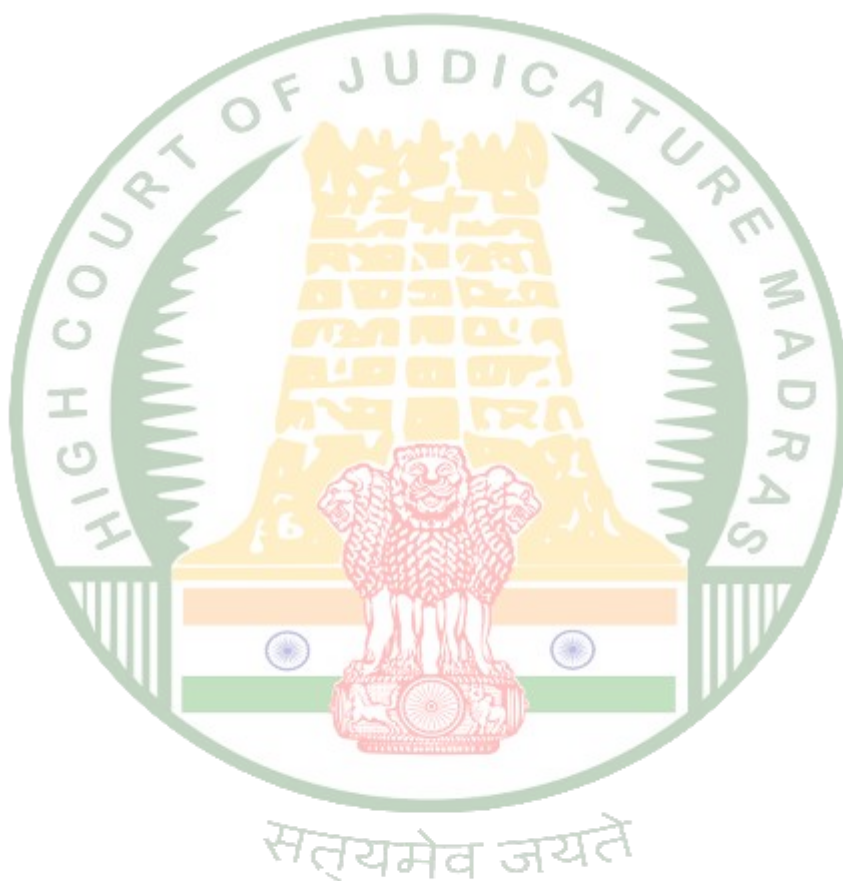
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2.The Section Officer
VR Section
High Court, Madras-104

+1 cc to M/s.V.Nicholas Advocate sr52461

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