



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.770 of 2012

and

M.P.No.1 of 2012

Vignesh
S/o.Surender

.. Appellant/1st Respondent

Vs.

1.R.Lakshmi
2.R.Vijayakumar

... Respondent/Claimant
..Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.03.2010 made in M.C.O.P.No.396 of 2006 on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge) Thirupatthur.

For Appellant	: Mr.S.V.Karthikeyan
For Respondents	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 10.03.2010 made in M.C.O.P.No.396 of 2006 on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge) Thirupatthur.

2. The averments made in the claim petition are as follows:

(i) On 09.06.2006 at about 11.45 a.m near Eripallam in between Alangayam-Tirupattur Main Road, the 1st respondent was walking on the extreme left side of the road towards Tirupattur, on the same direction, a two wheeler having registration No.TN 23 AY 0785 belonging to the 2nd respondent herein was driven by the appellant in very rash and negligent manner and dashed against the 1st respondent, she was walking on the same direction.

(ii) Due to the impact, the 1st respondent sustained fracture on her leg and also sustained injuries all



over the body. Immediately after the accident, the 1st respondent was taken to Government Hospital, Tirupattur. She was taking treatment in the said Hospital and referred to GPH, Vellore. Then, the 1st respondent has been taken to Government Pontion Hospital and admitted as in-patient. A case crime No.143 of 2006 under Section 279, 337 and 338 I.P.C is registered by the Kurisilapattu Police Station against the appellant and the same is pending for investigation. The said accident took place only due to the fault of the driver of the two wheeler. The appellant is the driver of the vehicle and 2nd respondent is the owner of the vehicle and both are liable to pay compensation to the 1st respondent.

3. Before the Tribunal, the claimants P.W.1 and P.W.2 were examined and Exhibits P1 to P13 were marked. On behalf the respondents, none was examined and Exhibit R.W.1 was marked.

4. The Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the two wheeler and accordingly, held that R1-Driver and R2-Owner of the two wheeler is liable to pay the compensation and arrived at the compensation based upon Ex.P13 and awarded a compensation of Rs.56,250/- along with 7.5% interest.

5. Aggrieved against the liability and the quantum, the rider of the two wheeler has preferred this appeal.

6. The learned counsel for the appellant would submit that at the time of the accident, the appellant was a driver and his date of birth is 09.04.1992 and also drawn my attention to the counter filed by the second respondent-owner of the vehicle before the Tribunal and contended that since a case has been instituted against the minor the claim petition is not maintainable and as such, the award has to be set aside.

7. After perusing the records, the second respondent-owner of the vehicle has filed the counter statement as same was adopted by the first respondent.

8. Though the plea has been raised before the Tribunal that at the time of the accident, the first respondent before the Tribunal, being the driver of the two wheeler is a minor for the reasons best known they have not entered the witness box to depose about the manner of the accident and no documents were adduced to substantiate the date of birth of respondent/or before Tribunal as stated in the affidavit. In the absence of oral and documentary evidence are being adduced before the Court, the Tribunal has gone and decided that since the police records Ex.P1 has been filed against the first respondent before the Tribunal, (the appellant herein) and accordingly held that



the accident has taken place due to the rash and negligent driving of the driver and also observed that both driver and the owner are jointly and severally liable to pay the equal compensation and in the absence of any documentary evidence or any oral evidence, the points raised by the appellant herein that he was a minor at the time of the accident cannot be gone into for want of evidence at the appellate stage.

9. In the result,

(i) this Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.56,250/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No. 396 of 2006, dated 10.03.2010, on the file of the Motor Accidents Claims Tribunal, Principal Sub-Judge, Thirupathur within a period of eight weeks from the date of receipt of a copy of this order.

(iv) It is open to the claimants to file petition before the Tribunal for withdrawal of the compensation amount. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Principal Sub-Judge), Thirupatthur

2. The Section Officer,
V.R.Section, High Court, Chennai-104.

+1cc to Mr.S.V.Karthikeyan, Advocate sr.27807

C.M.A.No.770 of 2012 and
M.P.No.1 of 2012

ln(co)
nr 11.12.2019