

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.1059 of 2014 and
M.P.No.1 of 2014

K.N.Theerthamalai @ Babu ... Appellant/Respondent

Vs.

Varadhan @ Varadaraj ... Respondent/Petitioner

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 23.10.2013 passed in MCOP No.396 of 2011 by the Subordinate Judge/ Motor Accident Claims Tribunal, Vaniyambadi, Vellore.

For Appellant : Mr.A.Sudesh Kumar

For Respondent : Mr.M.B.Raghavan
Amicus Curiae

JUDGMENT

The appellant is the respondent in MCOP No.396 of 2011 on the file of the Subordinate Judge/ Motor Accident Claims Tribunal, Vaniyambadi, Vellore.

2. The respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 11.01.2008.

3. The case of the respondent/claimant is that on 11.01.2008, at about 6.00 p.m. he was riding his two wheeler and was proceeding towards his house from Vaniyambadi and when he was nearing Fort Vaniyambadi, an electric scooter ridden by its driver rashly and negligently hit his two wheeler, as a result of which, he sustained injuries all over his body and he was immediately rushed to Government Hospital at Vaniyambadi, from where, he was referred to Government Hospital at Vellore. His further contention is that the rash and negligent riding of the rider of the scooter was the cause of accident and therefore, the owner of the scooter is liable to pay compensation to him.

4. The Subordinate Judge/ Motor Accident Claims Tribunal, Vaniyambadi, Vellore, after analysing the evidence on record, awarded a compensation of Rs.97,000/- and directed the appellant /respondent to pay the entire compensation amount together with interest at 7% per annum to the claimant. Aggrieved over the same, the respondent has filed the present appeal.

5. The appellant/ owner of the scooter had challenged the Award passed by the Tribunal on the ground that the claim petition is not maintainable, since the scooter is not a motor vehicle and therefore, the Tribunal had no jurisdiction to entertain the claim petition for compensation.

6. Since there was no representation for the respondent/ claimant, this court appointed Mr.M.B.Raghavan as Amicus Curiae to file his report. Accordingly, he filed his report.

7. There is no dispute over the accident involved in the appellant's scooter resulting in injuries to the respondent/claimant. This scooter was operated in a public place and the First Information Report was also registered against the appellant, who was riding the scooter. Section 2 (28) of the Motor Vehicles defines "Motor Vehicle" or "Vehicle" which is extracted here under.

"Motor Vehicle" or "Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

Thus "Motor Vehicle" or "Vehicle" which is mechanically propelled vehicle adapted for use upon roads, falls within the definition of "Motor Vehicle" .

8. It is pertinent to point out that the appellant had not raised this ground of maintainability of the claim petition in his counter filed before the Tribunal. He has not also specifically contended that this scooter, which was involved in the accident was not a motor vehicle. It is also to be pointed out that the appellant had not marked any documents such as invoice or other records before the Tribunal to establish that the scooter was of such construction and capacity and is not fall within the definition of "Motor Vehicle ". In the absence of pleading or evidence with regard to the technical specifications of the scooter to determine whether it was a motor vehicle, this court cannot come to a conclusion at this stage that the vehicle was not motor

vehicle, especially when the issue is based on question of facts. If the appellant seeks to bring his vehicle under any exemption or definition of " Motor Vehicle ", he must establish that his vehicle had such specifications, which would take it out of the definition of "Motor Vehicle". Therefore, the present appeal fails and is liable to be dismissed.

9. In the result, the civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is closed. The orders dated 23.10.2013 passed in MCOP No.396 of 2011 by the Subordinate Judge/ Motor Accident Claims Tribunal,Vaniyambadi, Vellore is upheld.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge
Motor Accident Claims Tribunal,
Vaniyambadi, Vellore.

+1cc to Mr.D.A.Sudesh Kumar, Advocate, S.R.No. 81060

CMA.No.1059 of 2014 and
M.P.No.1 of 2014

सत्यमेव जयते

RSI (CO)
GN(02/03/2020)

WEB COPY