

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1593 of 2009

Perumal ... Appellant/Respondent

vs.

Minor.Dhasthakir
(Rep. by his natural guardian
and his father Sheik Babu) ... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.12.2008 made in M.C.O.P.No.285 of 2006 on the file of Motor Accident Claims Tribunal, Additional Special Court, Krishnagiri.

For Appellant : Ms.S.Priyadharshini
for Mr.E.Kannadasan

For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant, owner of the tractor-trailer, against the award dated 31.12.2008 made in M.C.O.P.No.285 of 2006 on the file of Motor Accident Claims Tribunal, Additional Special Court, Krishnagiri.

2.The appellant is respondent in M.C.O.P.No.285 of 2006 on the file of Motor Accident Claims Tribunal, Additional Special Court, Krishnagiri. The respondent, who is the minor representing by his father, filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.04.2005.

3.According to the respondent, on the date of accident i.e., on 21.04.2005 at about 9.30 a.m., while the respondent was playing in front of his house near Kamaraj nagar lake, Krishnagiri Taluk, the driver of the tractor-trailer belonging to the appellant, drove the same in a rash and negligent manner,

hit the respondent and caused the accident. Due to the accident, the respondent sustained grievous injuries all over the body and therefore, he filed the above claim petition claiming compensation against the appellant.

4.The appellant filed counter statement denying the averments made in the claim petition and stated that the tractor-trailer was parked in his house for getting Fitness Certificate from RTO on the date of accident. The respondent sustained injuries due to falling of old cement slabs on his right leg, while he was trying to extract iron strings and scraps from the old molding, along with some other friends. Therefore, the appellant is not liable to pay any compensation to the respondent.

5.Before the Tribunal, father of the respondent was examined as P.W.1 and marked three documents as Exs.P1 to P3. On the side of the appellant, the appellant examined himself as R.W.1, one Raman, neighbour of both the appellant & respondent was examined as R.W.2, the driver of the tractor-trailer, was examined as R.W.3 and one Saravanan, Investigating Officer, was examined as R.W.4 and marked the final report as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor-trailer belonging to the appellant and directed the appellant to pay a sum of Rs.27,000/- as compensation to the respondent, as the said tractor-trailer was not insured with any Insurance Company.

7.Against the said award dated 31.12.2008 made in M.C.O.P.No.285 of 2006, granting compensation to the respondent, the appellant has come out with the present appeal challenging the liability fastened on him.

8.The learned counsel appearing for the appellant contended that the Tribunal failed to properly appreciate the evidence of R.W.4, Investigating Officer and in Crime No.267 of 2005, R.W.4 has filed final report before the Judicial Magistrate's Court, Krishnagiri, as 'mistake of fact' on the complaint given by the respondent on 23.04.2005. R.W.2, the neighbour and house owner of the respondent, has deposed that no accident has occurred on 21.04.2005 and respondent got injured, when the respondent and other children tried to collect iron strings and scraps from the old molding & also slab wastes in Kamaraj nagar lake, the cement slab fell down on the right foot of the respondent and that he sustained injuries. The Tribunal erred in rejecting the evidence of R.W.1 and R.W.3 based on minor discrepancies in respect of inspection of tractor by the Motor Vehicle Inspector. From the wound certificate marked as Ex.P2, it is seen that the

respondent sustained injuries on his four fingers of his right foot except right foot toe. It shows that it is not possible for the respondent to get injury through the rear wheel of the tractor-trailer and its big wheel. The Tribunal failed to see the evidence of P.W.1, who deposed that the tractor-trailer hit the back side of the respondent, when he was facing his house from the road. If the tractor-trailer hit the respondent from back side, he would not have sustained injuries mentioned in the wound certificate and prayed for setting aside the award of the Tribunal.

9. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

10. Heard the learned counsel appearing for the appellant and perused the entire materials available on record.

11. It is the contention of the respondent that when the minor respondent was standing in front of his house, the tractor-trailer belonging to the appellant driven by its driver in a rash and negligent manner, hit the respondent on his back side and caused the accident. Due to the accident, the respondent sustained injuries on his right leg. To substantiate the same, the father of the respondent was examined as P.W.1 and deposed to that effect. F.I.R., which was registered against the driver of the tractor-trailer belonging to the appellant was marked as Ex.P1. On the other hand, it is the contention of the appellant that no such accident has occurred as alleged by the respondent and the tractor-trailer was stationed at the house of the appellant for the purpose of getting Fitness Certificate from RTO. The respondent sustained injuries, when the cement slab fell on his foot. To substantiate the said contention, the appellant examined himself as R.W.1, neighbour of the appellant and respondent as R.W.2, driver of the tractor-trailer as R.W.3 and Investigating Officer as R.W.4.

12. R.W.2/neighbour, in his evidence has deposed that while the respondent and other children were trying to collect the iron strings and scraps from the old molding, the cement slab fell down on the right foot of the respondent and he sustained injuries. R.W.2 in his cross-examination, admitted that he knew the appellant for the past ten years and therefore, the Tribunal rejected the evidence of R.W.2 as he is an interested witness.

13.As far as the evidence of R.W.1 is concerned, he denied the accident & involvement of the tractor-trailer and deposed that the tractor-trailer was taken by the Head Constable on 21.04.2005 and he brought back the tractor after two days. He further deposed that after he brought back the tractor, it was not sent for inspection by the Motor Vehicle Inspector. He could not furnish the date on which he brought back the tractor from the Police Station.

14.On the other hand, R.W.3/driver of the tractor-trailer admitted in his cross-examination that he took the tractor-trailer to the Motor Vehicle Inspector on 25.04.2005 and after showing the document, brought back the said vehicle. He has deposed that he was enquired by the Police on 24.04.2005.

15.On the other hand, R.W.4/Investigating Officer, in his evidence has deposed that on 23.04.2005 itself, he came to the conclusion that the complaint given against R.W.3 was a mistake of fact. His explanation as to why the tractor-trailer sent for inspection by the Motor Vehicle Inspector on 25.04.2005 was not accepted by the Tribunal on the ground that as per Ex.P3/Motor Vehicle Inspector's report, wherein it is stated that the request for inspection of tractor-trailer by the Motor Vehicle Inspector was issued on 25.04.2005. R.W.3 in his evidence has deposed that Police enquired him on 24.04.2005. If really R.W.4 came to the conclusion on 23.04.2005 itself that complaint against R.W.3 was mistake of fact, there is no necessity for the Police to take R.W.3, driver of the tractor-trailer on 24.04.2005 to the Police Station and enquire him. In addition to that, R.W.4 has not furnished any details as to whether final report was filed before the concerned Judicial Magistrate's Court. No notice was issued to the respondent with regard to final report. The Tribunal considering the contradiction in the evidence of R.W.1, R.W.3 and R.W.4, rejected their evidence and held that the accident has occurred only due to rash and negligent driving by R.W.3, driver of the tractor-trailer. The Tribunal has given valid reason for rejecting the evidence of R.W.1, R.W.3 and R.W.4. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

16.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.27,000/- awarded by the Tribunal as compensation to the respondent along with interest and costs is confirmed. The appellant is directed to deposit the entire

amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalised Banks till the minor attains majority. The father of the respondent viz., Sheik Babu, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Additional Special Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to

The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Ms.S.Priyadarshini, Advocate Sr.24602

C.M.A.No.1593 of 2009

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