

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2719 of 2009

K.Rajesh ... Appellant /Petitioner

Vs.

1. M.Dhanaraja

2. The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager
Neyveli, Cuddalore District

3. Murugesan ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed by the Motor Accident Claims Tribunal (Subordinate Judge), Nagapattinam made in M.C.O.P.No.150 of 2007 dated 24.03.2009 by awarding the compensation as prayed for in the O.P. and to allow the appeal with costs.

For Appellant : Mr.M.Tamizhavel

For Respondents : Mr.M.Krishnamoorthy for R2
No Appearance - R1

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed seeking to set aside the award passed by the learned Motor Accident Claims Tribunal (Sub-Court), Nagapattinam made in M.C.O.P.No.150 of 2007 dated 24.03.2009.

2. The case of the appellant is that on 28.08.2005, he was riding a motor cycle, bearing registration no.TN 51 B 2196 along with his friend, namely, Selvakumar, who was pillion rider and when the vehicle was nearing Muneeswaran koil of Neikuppai around 3.30 p.m., the driver of the Mahindra van bearing registration no.TN 49B 0626 had driven the vehicle in a rash and negligent manner and hit behind the appellant's vehicle. As a result, both of them were thrown away and the appellant sustained injuries on his cheek, right ankle, left shoulder, left wrist , right side of head and fracture on his thigh bone.

Immediately, he was taken to Government Hospital, Mayiladuthurai and was treated as inpatient, thereafter, admitted as inpatient at Thanjavur medical college Hospital. A case was also registered against the driver of the Mahindra Van in Cr.No.450 of 2005 before Perambalur Police Station. Since the appellant suffered fracture, pain and sufferings all over the body, he claimed a sum of Rs.3,00,000/- with 18% interest per annum under various heads.

3. The 1st respondent filed his counter before the court below stating that the vehicle does not stand in his name, as on the date of accident and he had sold the vehicle to the 3rd respondent on 25.07.2005 itself for Rs.76,000/- and that the 3rd respondent has not taken any steps to effect the change of ownership before the concerned authority. Even the driver of the said van was not appointed by him. As on the date of the accident, the vehicle was insured with the 2nd respondent, therefore, the insurer of the vehicle alone is liable to pay the compensation. Therefore, he prayed for dismissal of the petition against him with costs.

4. The 2nd respondent / Insurance Company filed counter before the court below, stating that the petition is unsustainable in law and on facts, further, the appellant has not furnished the details of the insurance or the source of information to implead this respondent, as insurer of the vehicle. The 2nd respondent denies the fact that the vehicle was insured with them, the date of accident is on 28.08.2005 and the vehicle was insured only on 30.08.2008, the policy number is 2006/2821 and the policy period is from 30.08.2005 to 29.08.2006. The policy was insured by the insurer, namely, R.G.M.Kitte, Seninatham, Sethiyathoppu, Cuddalore District. Also, the appellant had only driven the vehicle in a rash and negligent manner without observing the road traffic rules and that he was only a learner of the vehicle. Further, the injuries suffered by the appellant are simple in nature and are completely cured. The amount of compensation claimed with interest is excessive, exorbitant, out of all proportions, not maintainable and not supported with bills or receipts. Therefore, he prays to dismiss the said petition.

5. The Learned Subordinate Judge, (Motor Accident Claims Tribunal), Nagapattinam, after considering the pleadings, oral and documentary evidence, had dismissed the claim petition on the ground that the appellant has not produced the proof of ownership of the vehicle, i.e, van, which was involved in the accident. Before the Tribunal, the appellant was examined himself as P.W.1 and Dr.Angathakumar was examined as P.W.2 and to substantiate his case, the appellant had marked Exs.P.1 to P.12 and no documents were marked on the side of the

respondents.

6. Aggrieved by the award, the appellant / claimant has filed the present appeal before this Court.

7. The learned counsel for the appellant submitted that the Tribunal failed to consider that the records relating to Mahindra Van bearing Reg.No.TN 49 B 0626 stands in the name of 1st respondent and the insurance policy was very well in force at the time of accident. He further contended that the Tribunal ought to have allowed the O.P., by taking into account that the accident had occurred due to the rash and negligent driving of the 1st respondent's driver. Therefore, pleaded to consider the case of the appellant and to grant compensation.

8. The learned counsel for the 1st respondent denies all the averments stated by the appellant and contended that the appellant was just learner of the moped and did not have valid and effective driving license to ride the moped on the date of alleged accident. Also, the injuries sustained by the appellant are simple in nature and completely cured, therefore, the amount claimed towards permanent disability and loss of earning is not maintainable, hence prayed that the award passed by the court below does not warrant any interference.

9. Initially, notice was ordered to the respondents 1 and 3 by this Court as early as on 12.10.2009 and the same were refused by them. Also, the private notice was served on the 1st respondent on 22.09.2009 and the notice for the 3rd respondent returned as 'no such address'. Though the 1st respondent name has been printed in the cause list, there is no appearance either in-person or through counsel.

10. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent, and perused the materials available on record.

11. On perusal of the award dated 24.03.2009 passed by the Learned Subordinate Judge, (Motor Accident Claims Tribunal), Nagapattinam, it is seen that the claim petition of the appellant was dismissed on the ground that the appellant has not produced any driving license permitting him to drive the two wheeler and stated that he has contributed negligence towards the accident. Further, the court below had observed that there is no coverage of insurance for the Mahindra Van bearing registration no.TN 49B 0626 and only subsequent to the accident, the insurance has been renewed and the appellant has not produced any evidence to show that the vehicle was insured with the second respondent, as on the date of the accident. The appellant had impleaded the 3rd respondent as owner of the

vehicle, but the 3rd respondent has not chosen to file any counter and the appellant has also not chosen to prove that either the 1st or 3rd respondent is the owner of the vehicle through any oral or documentary evidence and has not chosen to produce the M.V.I.Report for the van with registration No.TN 49 B 0626. Hence the court below has come to the conclusion that in the absence of proof, the court cannot fasten the liability, therefore, held that the appellant is not entitled for any compensation, thereby dismissed the claim petition.

12. It is to be noted that the Tribunal has not gone through the counter filed by the 1st respondent, wherein it is stated that as on the date of accident, policy is in existence. Even though impleading petition was filed by the appellant impleading the 3rd respondent before the court below, the 3rd respondent, has not chosen to appear. The Tribunal has not called for any document from the Insurance Company to verify whether any policy is in existence on the date of accident, but had merely stated that subsequent to the accident the policy has been renewed. That apart, Ex.P.2, Motor Vehicle's Inspection Report, does not say anything about the offending vehicle and simply closed the matter dismissing the claim petition.

13. That apart, when the 1st respondent has filed a detailed counter clearly stating that he sold the vehicle to the other person, atleast the court below ought to have considered the disability caused to the claimant and should have called the records from the R.T.O.Office and verified the name of the owner of the vehicle.

14. In view of all the above reasonings, the Award passed by the Motor Accident Claims Tribunal (Subordinate Judge), Nagapattinam in M.C.O.P.No.150 of 2007 dated 24.03.2009 is set aside and the matter is remanded back to the Motor Accident Claims Tribunal (Subordinate Judge), Nagapattinam for detailed trial. The Motor Accident Claims Tribunal (Subordinate Judge), Nagapattinam is directed to consider the case afresh without being influenced by any of the observations made by them as well as by this Court and pass appropriate orders on merits and in accordance with law.

Accordingly, the present Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Nagapattinam.

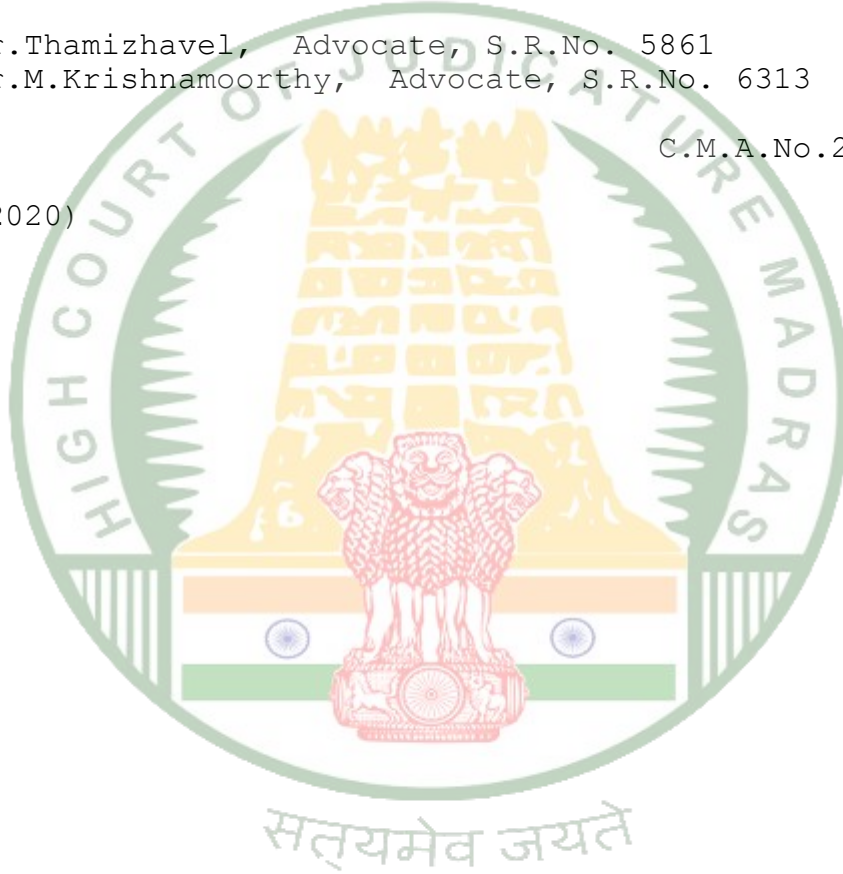
Copy To

The Section Officer,
VR Section, Madras High Court,
Chennai. (Send the records to the Tribunal forthwith)

+1cc to Mr.Thamizhavel, Advocate, S.R.No. 5861
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 6313

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KK(CO)
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