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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.598 & 599 of 2009

(Through Video Conferencing)

V.C.Ramakrishnan

... Appellant
in C.M.A.No.598/2009/Claimant

K.Padmesh

... Appellant
in C.M.A.No.599/2009/Claimant

Vs.

1. S.Sellakumar

2. M/s.Sabari Transports
Having Office at 16/C/10
S.A.P. Buildings,
Municipal Office Street,
Tiruppur.

3. The Branch Manager,
National Insurance Company Ltd.,
Perundurai Road, Erode.

... Respondents in both C.M.As./
Respondents in MCOPs

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 to set aside the common Judgment and separate Decrees dated 25.09.2008 made in M.C.O.P.Nos.553 & 512 of 2007 on the files of the First Additional District Court, Erode.

For Appellant : Mr.N.Manokaran in both C.M.As.

For 3rd Respondent : M/s.R.Sree Vidhya in both C.M.As.

For 2nd Respondent : No appearance in both C.M.As.



COMMON JUDGMENT

By this common Judgment, both the Civil Miscellaneous Appeals are being disposed.

2. The appellants were the claimants before the Motor Accident Claims Tribunal (I Additional District Court), Erode in M.C.O.P.Nos.553 & 512 of 2007. The Tribunal by the impugned common Judgment and separate Decrees dated 25.09.2008 in the respective cases has dismissed the claim petitions filed by the respective appellants herein. The operative portion of the impugned Judgment passed by the Tribunal dismissing the claim petitions filed by the appellants herein is reproduced below:-

A careful scrutiny of these Motor Vehicles Inspector's Reports will make absolutely clear that it is the rider of the two-wheeler who dashed the vehicle on the ongoing bus. As rightly submitted by the counsel for the 3rd respondent the bus also suffered a dent on the right side of the back bumper whereas the two-wheeler has suffered 5 debts only on its front portion. Therefore as rightly stated by the learned counsel for the 3rd respondent, this court, concludes that it is the rider of the two-wheeler Ramakrishnan was rash and negligent and he dashed his vehicle on the ongoing bus and invited the accident. As such, the allegations made in both the claim petitions regarding the manner of accident and the rider of the two-wheeler are absolutely false which is admitted by the petitioners themselves and conclusively this court is of the view that the petitioners have not proved the manner of accident as what has been stated in the claim petitions and otherwise it is found that it is the rider of the two-wheeler namely Ramakrishnan who was rash and invited the accident and therefore the accident occurred only due to the carelessness of the rider of the two-wheeler and poin No.1 is decided accordingly.

3. The learned counsel for the appellants has placed reliance on the decision of the Hon'ble Supreme Court in Vimla Devi and Others Vs. National Insurance Company Limited and Another, (2019) (2) SCC 186.

4. The learned counsel for the 3rd respondent Insurance Company submitted that the impugned common Judgment passed by



the Tribunal was well reasoned and requires no interference. It is submitted that the Tribunal has rightly rejected the claim petitions filed by the respective appellants.

5. I have considered the arguments advanced by the learned counsel for the appellants and the learned counsel for the 3rd respondent.

6. The above facts arrived by the Tribunal based on Exs.P1, P2 & P3, namely, FIR, Rough Sketch and MVI Report, makes it clear that the appellants themselves hit against bus. They were tortfeasors themselves. Therefore, neither the owner nor the insurer can be made liable to pay the compensation for the injuries suffered by the appellants due to the accident.

7. That apart, Ex.P1 FIR given by the appellant in C.M.A.No.599 of 2009 indicates that the motorcycle was being driven by the appellant (K.Padmesh) in C.M.A.No.599 of 2009 and the appellant in C.M.A.No.598 of 2009 (V.C.Ramakrishan) was the pillion rider. This statement was also given in the claim petition also. However, during cross examination, they have contradicted themselves. That apart, the Ex.P3 Motor Vehicle Inspector's Report establishes that the accident was not on account of any negligence on the part of the driver of the bus and therefore no liability can be fastened on the insurer of the bus.

8. Under these circumstances, I find no reasons to interfere with the impugned common Judgment and separate Decrees passed by the Tribunal. Therefore, the impugned Judgment and the separate Decrees passed in M.C.O.P.Nos.553 & 512 of 2007 are confirmed.

9. Accordingly, these Civil Miscellaneous Appeals are dismissed. No cost.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jen

To

The Motor Accident Claims Tribunal,
I Additional District Court,
Erode.



+2ccs to Mr.N.Manokaran, Advocate, S.R.No.40193, 40194

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.40127

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C.M.A.Nos.598 & 599 of 2009

RSV(CO)
RLP(27/08/2021)