

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1304 of 2015

N.Vibhushanan

.. Appellant

Vs.

1.A.Ramamoorthy

2.Raja

3.V.Pitchairathinam

4.Sellamuthu

5.Rajendran

6.Chinnusamy

7.Suresh

8.The District Collector
Salem District.

9.Revenue Divisional Officer
Attur, Salem District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2015 made in M.C.O.P.No.1242 of 2010 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Ms.M.R.Sakunthala

For R1 : No appearance

For R2 & R6 : Mr.L.Mouli

For R4, R5, R7 to R9: No appearance

For R3 : No Such Address

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 05.01.2015 made in M.C.O.P.No.1242 of 2010 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem.

2.The appellant is the claimant in M.C.O.P.No.1242 of 2010 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.I, Salem. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.08.2007.

3.According to the appellant, on the date of accident, i.e., on 19.08.2007, on receiving information that the respondents 6 and 7, drivers of the tractors-trailers were illegally quarrying sand from Swetha river at Kavarpanai village, the appellant, Village Administrative Officer, had gone to the said spot. At that time, the respondents 6 and 7 drove the tractors in a rash and negligent manner, with an intention to murder the appellant, dashed against him, the appellant fell down and sustained grievous injuries. Therefore, the appellant filed the above claim petition claiming compensation against the respondents.

4.The 4th respondent filed counter statement, which was adopted by the respondents 5 & 7 and denied the averments made in the claim petition. They contended that the tractor was not quarrying sand from Swetha river and the appellant has falsely implicated them for unlawful gain. In F.I.R., nowhere the registration number of the tractor was mentioned.

5.The 6th respondent filed counter statement, which was adopted by the 2nd respondent and contended that the case of the appellant is contrary to the case registered by the Police. There was no occurrence as alleged by the appellant.

6.Before the Tribunal, the appellant examined himself as P.W.1 and one Dr.S.Rajamanickam, was examined as P.W.2, marked twelve documents as Exs.P1 to P12 and three documents as Exs.X1 to X3. On the side of the respondents, no oral evidence was let in and four documents were marked as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence dismissed the claim petition holding that the injuries sustained by the appellant did not arise out of the accident.

8. Against the order of dismissal dated 05.01.2015 made in M.C.O.P.No.1242 of 2010, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant/claimant contended that the Tribunal having held that the drivers of the tractors-trailers dashed against the appellant and the appellant sustained injuries due to such impact, erred in dismissing the claim petition. The reasoning of the Tribunal for dismissing the claim petition that the drivers of the tractors-trailers dashed against the appellant with an intention to kill him and therefore, no accident has occurred, is erroneous. The Tribunal having taken note of the fact that F.I.R. in crime No.218/2007 is registered in Veeraganur Police Station under Sections 147, 148, 279, 326, 332, 506(ii), 107, 307 and 333 IPC against the respondents 1 to 7, erred in dismissing the claim petition. As per Section 279 IPC, the drivers of the tractors-trailers, who drove the vehicles in a rash and negligent manner as to endanger human life or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment, which may extend upto six months. As per the said definition, for the rash driving or riding in a public way, the Police have registered the case against the respondents 1 to 7 under various Sections of IPC and Mines & Minerals Act. When the appellant was trying to stop the illegal sand quarrying, he expected that both the drivers of the tractors-trailers would stop their vehicle from moving further. On the other hand, they drove the tractors-trailers in a rash and negligent manner, dashed against the appellant and caused grievous injuries. The said incident is only an accident. The Tribunal without considering the same, erred in dismissing the claim petition and prayed for allowing the appeal.

10. The learned counsel appearing for the respondents 2 and 6 contended that no such incident as alleged by the appellant has occurred. The appellant is facing lots of problem in his job. In order to divert his problem, the appellant has come out with this false case. The facts mentioned in his complaint as well as the criminal case registered in Veeraganur Police Station are contrary to the facts stated by the appellant in the claim petition and prayed for dismissal of the appeal.

11. Though the 1st respondent entered appearance through the counsel, there is no representation on behalf of him at the time of hearing. Though notice was served on the respondents 4, 5, 7 and the respondents 8 & 9/official respondents and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 2 & 6 and perused all the materials available on record.

13. It is the contention of the appellant that he is working as Village Administrative Officer at Kavarpalanai village and on receipt of information that the respondents 6 & 7, who are illegally quarrying the sand from Swetha river at Kavarpalanai village without any license, the appellant along with the Assistant Loganathan went to stop the illegal sand quarrying. According to the appellant, the respondents 6 and 7 drove the tractors-trailers in a rash and negligent manner, dashed against the appellant and caused severe injuries to the appellant. According to the appellant, with the help of villagers, both the tractors were seized and criminal case was registered against the respondents 1 to 7. The Tribunal considering the evidence of the appellant as well as F.I.R., final report, held that the appellant sustained injuries when the tractors dashed against him. Having held so, the Tribunal dismissed the claim petition on the ground that the respondents 6 and 7 with an intention to murder the appellant dashed against him and it is not an accident. The said reason is erroneous. It is well settled that even if the vehicle is not moving and a person falls down from the vehicle, dies or sustains injuries, the same amounts to accident and the owner and Insurance Company are liable to pay compensation.

14. Applying the said principle, the portion of the award holding that it is not an accident alone is set aside and M.C.O.P.No.1242 of 2010 is remanded back to the Tribunal for fresh consideration on merits for fixing negligence and liability and awarding compensation to the appellant. It is open to the parties to let in any further evidence, if they desire so.

15. Accordingly, the Civil Miscellaneous Appeal is allowed. The M.C.O.P. is of the year 2010 and the Tribunal is directed to dispose of the same within a period of three months from the date of receipt of a copy of this judgment. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge No.I
The Motor Accident Claims Tribunal
Salem.

2.The District Collector
Salem District

3.The Revenue Divisional Officer
Attur, Salem District

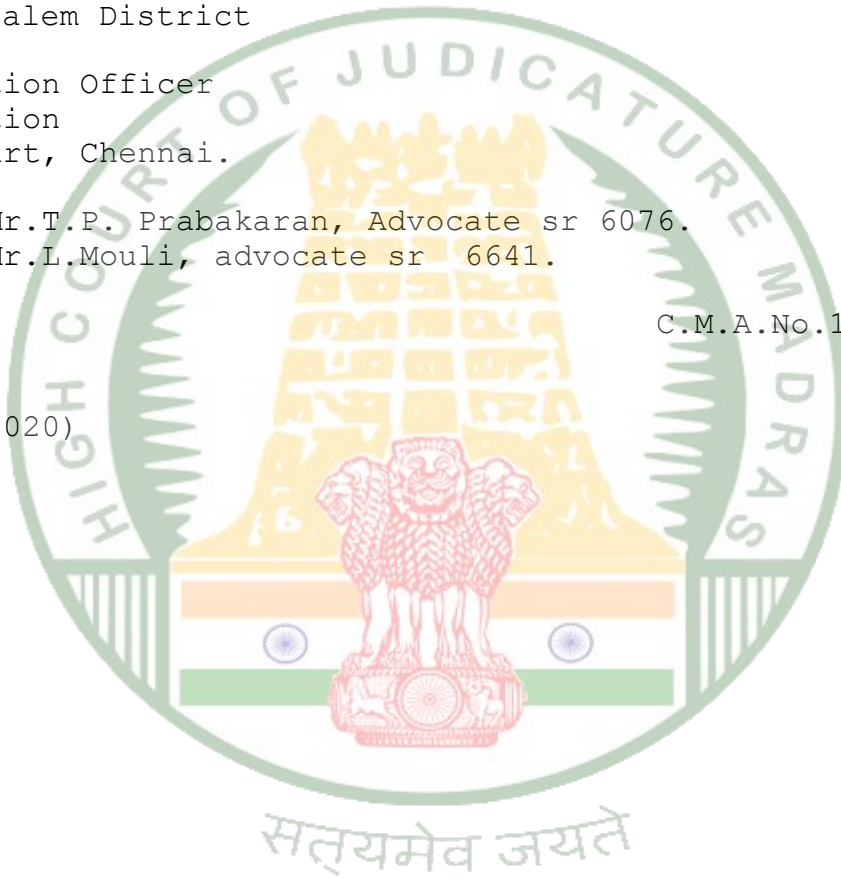
4.The Section Officer
V.R.Section
High Court, Chennai.

+1 Cc to Mr.T.P. Prabakaran, Advocate sr 6076.

+1 Cc to Mr.L.Mouli, advocate sr 6641.

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SPD(CO)
SP(30/11/2020)



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