

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.908 of 2015

and

M.P.No.1 of 2015

National Insurance Company Limited,
B.O., LRN Complex,
Saradha College Road,
Salem - 7.

... Appellant/2nd Respondent

Vs.

1.Sivaramakrishnan ... 1st Respondent/Petitioner

2.L.Saraswathy ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.10.2013 made in M.C.O.P.No.435 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 09.10.2013 made in M.C.O.P.No.435 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.

2. The appellant is the second respondent in M.C.O.P.No.435 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem. The first respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.03.2006.

3. According to the first respondent, on 07.03.2006 at about 05.30 A.M., while he was driving the omni van belonging to

the second respondent on Chennai - Salem main road, to avoid dashing against the oldman who suddenly crossed the road, the first respondent stopped the vehicle, but inspite of his best efforts, the omni van went out of his control and dashed on the road side tree and caused the accident. Due to the said accident, the first respondent sustained serious and grievous injuries and therefore, he filed claim petition claiming a sum of Rs.6,00,000/- as compensation against the second respondent and appellant/Insurance Company, being the owner and insurer of the omni van respectively.

4. The second respondent, owner of the omni van remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement and denied all the averments made by the first respondent. According to appellant/Insurance Company, the first respondent slept while driving the vehicle and lost his control and due to the same, the vehicle dashed against the tree, which was on the right side of the road. He was not a paid driver and he is son of the second respondent. Hence, he is not a third party and therefore, he is not entitled to claim compensation. As per M.V.I. Rules, only third parties are entitled to claim compensation. Therefore, the first respondent has no right to claim any amount as against the appellant/Insurance Company. As per the F.I.R., the first respondent is the accused. The first respondent is having only L.L.R and he has not affixed the 'L' Board in both sides of the vehicle. The first respondent has to prove that he was working as Video Photographer and was earning a sum of Rs.15,000/- per month by valid documents. The first respondent has to prove the injuries sustained by him and the amounts spent by him for the injuries by producing valid documents. In any event, the quantum of compensation claimed by the first respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the first respondent, the first respondent examined himself as P.W.1 and Dr.Muthusamy was examined as P.W.2 and one Kumar, eye-witness was examined as P.W.3 and 10 documents were marked as Exs.P1 to P10. On behalf of the appellant, one Rajendran was examined as R.W.1 and one document was marked as Ex.R1.

7. 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 omni van belonging to the second respondent and fixed 50% negligence on the part of the first respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay balance 50% of the award amount, i.e., Rs.1,56,990/- as

compensation to the first respondent/claimant at the first instance and then recover the same from the second respondent, owner of the omni van.

8. Challenging the said award dated 09.10.2013 made in M.C.O.P.No.435 of 2007, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to adjudicate the issue of negligence and without fixing the negligence in the claim petition under Section 166 of Motor Vehicles Act, 1988, erred in directing the appellant-Insurance Company to pay 50% of the total compensation and recover the same from the second respondent, owner of the omni van. The Tribunal failed to consider the evidence of R.W.1 to fix the negligence. The first respondent is a tortfeasor and hence, he is not entitled to claim compensation from the appellant-Insurance Company. The Tribunal failed to note that the first respondent is the son of the second respondent. The second respondent remained *exparte* before the Tribunal. The Tribunal failed to note that even in F.I.R. it is mentioned that the vehicle in question belongs to the second respondent, who is the mother of the first respondent. The Tribunal failed to note that Ex.P1/FIR is relied on the side of the first respondent to prove the negligence and once relied, he cannot be permitted to turn around for other aspects, in view of the judgment of Hon'ble Apex Court reported in 2007 AIR SCW 3591, [Oriental Insurance Company Ltd., Vs. Premlata Shukla and ors.]. When the claim petition itself is not maintainable and the Insurance Company is not made liable, then question of pay and recovery does not arise and prayed for setting aside the award passed by the Tribunal.

10. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

11. Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

12. From the materials available on record it is seen that the Tribunal framed an issue, whether the accident occurred due to negligence on the part of the first respondent and whether the appellant-Insurance Company is liable for the same. To decide the issue, the Tribunal has considered the materials on record and evidence of P.W.3 and held that the first respondent without driving license drove the vehicle during night hours in the National Highways which is unsafe for himself and for other

drivers and second respondent is responsible for permitting the first respondent to drive the vehicle. The above finding of the Tribunal shows that the Tribunal has not adjudicated the issue of negligence (i.e.,) whether the accident occurred due to negligence on the part of the first respondent. In view of the failure on the part of the Tribunal for fixing negligence, the award of the Tribunal is set aside and the matter is remanded back to the Tribunal for fresh adjudication. It is open to the parties to let in further evidence, if they so desire.

13. For the above reason, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.2205

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C.M.A.No.908 of 2015

SSP (CO)
GMY (23/10/2020)

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