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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Miscellaneous Appeal No.109 of 2014

M.P.Nos.1 & 2 of 2014

K.S.Ahemed Kabeer ... Appellant/ R-2

..Vs..

1. Chandrasekaran ... R-1/ Petitioner

2. Karthik Jayakumar ... R-2/ R-1

3. The New India Assurance Company,
No.11-19, 20 Government Arts College Road,
Coimbatore District, Coimbatore - 18. ... R-3/ R-3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 [1] of the Motor Vehicles Act 1988, against the Order dated 22.03.2013 passed by the Motor Accident Claims Spl. Tribunal, Coimbatore in M.C.O.P.No.984 of 2012.

For Appellant : Mr.Gopi
for Mr.V.S.Senthil Kumar

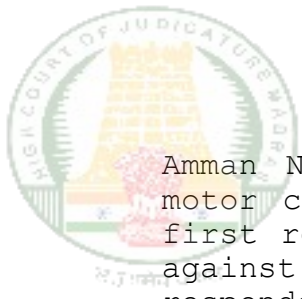
For R-1 : Mr.T.M.Naveen

For R-3 : Mr.M.K.Krishnamoorthy

J U D G M E N T

Challenging the order, dated 22.03.2013 made in M.C.O.P.No.984 of 2012 by the Motor Accident Claims Spl. Tribunal, Coimbatore, the second respondent/appellant has preferred the present Civil Miscellaneous Appeal.

2. The case of the claimant before the Tribunal is that on 28.01.2010 at about 6.00 p.m., when the claimant was coming in his moped vehicle bearing registration No.TN-37-AA-2639 from



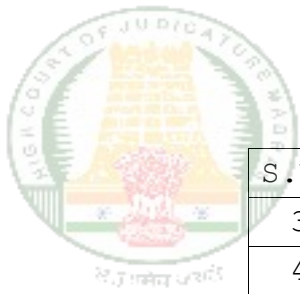
Amman Nagar to All India Radio near Olympus, at that time, a motor cycle bearing Registration No.TN-37-AW-4601 driven by the first respondent came in a rash and negligent manner and dashed against one old man viz., Ganadhara Warriar and the first respondent lost his balance and again dashed against the claimant. As a result, the claimant sustained grievous injuries. The claimant, who was working as a machine operator, earning a sum of Rs.8,500/- per month, was hale and healthy prior to the accident. Hence, the claimant claims compensation for a sum of Rs.4,26,000/- with interest at the rate of 24% p.a. and costs.

3. The averments made in the counter filed by the second respondent is that the claim petition is not maintainable in law and on facts. The second respondent is not the owner of the offending vehicle. He sold the offending vehicle to one S.Nagaraj on 12.11.2009 and obtained a delivery note to prove the ownership and possession is not with him on the date of accident. It is his further contention that due to the petitioner's negligence, the accident had occurred. The age, avocation, income, nature of injuries period of treatment, medical expenses and loss of earning of the petitioner are also denied. The compensation under various heads is highly excessive. Hence, the petition is liable to be dismissed with costs.

4. The third respondent filed a counter denying the rash and negligent driving of the first respondent, however, admitted that the vehicle involved in the accident was insured with the third respondent during the time of the accident. The claimant has to prove that the first respondent had a valid driving license at the time of alleged accident. Hence, this respondent is not liable to pay any compensation to the claimant. The respondent further denied the age, avocation, income, nature of injuries, period of treatment, medical expenses and lose in earning of the petitioner. The claim of interest is excessive and exorbitant. The compensation claimed under various heads is highly excessive and prayed for dismissal of the claim petition with costs.

5. The Court, below after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.1,48,160/- under the following heads :

S.No.	Heads	Amount in Rs.
1.	Compensation for partial permanent disability	60,000/- [30 x 2000]
2.	Partial loss of income	30,000/- [6 x 5000]



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S.No.	Heads	Amount in Rs.
3.	Transport to Hospital	5,000/-
4.	Extra Nourishment	5,000/-
5.	Pain and sufferings	20,000/-
6.	Medical Bills	28,160/-
	Total	1,48,160/-

Aggrieved over the same, the appellant/second respondent has filed this Civil Miscellaneous Appeal, challenging the compensation awarded by the Tribunal to the claimant and prays for setting aside the order dated 22.03.2013 made in M.C.O.P.No.984 of 2012 by the Motor Accident Claims Spl. Tribunal, Coimbatore.

6. The main contention of the appellant/second respondent is that he is not involved in the accident in any way and he was not aware of the accident and he came to know about the accident and its consequences only after receipt of the notice from the Court. The Tribunal has miserably failed to consider the objections raised by the appellant while passing the impugned order. The Tribunal, though was aware of the sale of the vehicle by the appellant, failed to ascertain who was in possession of the vehicle. The Tribunal has also failed to consider Section 31 of the Motor Vehicles Act and merely imposed obligation on the transferor. The transferee of the vehicle has to notify the transfer and non-compliance of the same will not invalidate the transfer, which had already taken place. Hence, prayed to allow this appeal.

7. It is his further contention that the appellant had sold the vehicle to one Mr.S.Nagaraj, representing Sunrise Autos Consulting, as early as on 12.11.2009 and he is neither the Owner nor in possession of the vehicle at the time of accident and he is not aware of the accident. As the petitioner had sold the vehicle, he is not liable to pay the compensation to the claimant. It is his further contention that though the Tribunal is aware of the sale of the vehicle, it has erroneously burdened the liability on the appellant and without application of mind has directed the Insurance Company to pay the compensation and recover the same from the Appellant.

8. The learned counsel for the first and third respondents would submit that the Tribunal, after considering both the oral and documentary evidence of both sides, has awarded just



compensation and hence, the well considered award of the Court below needs no interference.

9. Admittedly, the appellant/second respondent is the owner of the vehicle. A perusal of the records indicate that his vehicle is insured with the third respondent. In this regard, the third respondent was examined R.W.3 and R.W.3 has stated in his evidence that the first respondent did not have valid driving license. A perusal of Ex.R.3 to R.6 would reveal that the appellant/second respondent is the owner of the vehicle and hence, he is liable to compensate the claimant. Therefore, the claim of the appellant/second respondent that he had already sold the vehicle and he is not the owner of the vehicle at the time of accident cannot be accepted in the absence of any valid proof filed by the appellant/second respondent in this regard. Hence, the Tribunal has rightly held that the second respondent alone is liable to pay the compensation and directed the third respondent to pay the compensation amount with liberty to recover the same from the appellant/second respondent. Therefore, there is no merits in this appeal and the same is liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs. The third Respondent is directed to deposit the entire amount awarded by the Tribunal, if not already deposited, together with interest at 7.5% per annum from the date of the Claim Petition till the date of deposit, less the amount, if any, already deposited to the credit of M.C.O.P.No.984 of 2012 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge), Coimbatore, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vrc/sts



To

The Motor Accident Claims Special Tribunal,
(Special Subordinate Judge), Coimbatore.

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Copy to:

The Section Officer,
V.R. Section,
High Court, Madras-104.

+1cc to M/s.K.P.Jotheeswaran, Advocate, S.R.No.9816

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SSN(CO)
SU(05/05/2022)