



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.10.2021

Delivered On : 04.01.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.780 of 2014

and

M.P.(MD)No.1 of 2014

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National Insurance Company Ltd.,
Rep. By its Divisional Manager,
No.175-A, Great Cotton Road,
Tuticorin.

...Appellant/Respondent No.3

Vs.

1.Subaruddin
2.C.Daweed Raja
3.J.Antony

...Respondent/Petitioner

...Respondents/
Respondents No. 1 & 2

4.Stephenson
5.New India Insurance Co. Ltd.,
Rep. By its Divisional Manager,
Municipal Complex Building,
Neyyatrinkarai Post,
Trivandrum,
Kerala State.

...Respondents/
Respondents No. 4 & 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 16.08.2013 and made in M.C.O.P.No.87 of 2007 on the file of the Motor Accident Claims Tribunal(Sub Court), Kuzhithurai.

For Appellant : Mr.S.Srinivasa Raghavan
For 5th Respondent : Mr.K.Murugesan
For Respondents 1 to 3, 4 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.87 of 2007 dated 16.08.2013, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Kuzhithurai.

2.The appellant herein is the third respondent, the first respondent herein is the petitioner, the respondents 2 and 3 herein are the respondents 1, 2 and the respondents 3 and 4 herein are the respondents 4 and 5 in the claim petition. The first respondent has filed a claim petition in M.C.O.P.No.87 of 2007, claiming



compensation for the damages, in an accident that took place on 14.06.2005. The Tribunal has awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation. Against which, the appellant has preferred this appeal.

3. Brief substance of the claim petition in M.C.O.P.No.87 of 2007 is as follows:

On 14.06.2005, at about 03.00 a.m., when the petitioner was travelling in mini lorry from Thoothukudi - Tirunelveli road near Mangalagiri Vilaku, a water tank lorry bearing registration No.TN-74-F-3573 that belong to the second respondent was driven by the first respondent in a rash and negligent manner and dashed against the mini lorry. The driver of the mini lorry died on the spot. The loadmen Suresh, Rymond and Muthayan sustained grievous injuries. The mini lorry was damaged. The petitioner claimed a sum of Rs.5,50,000/- (Rupees Five Lakhs and Fifty Thousand only) as compensation for the damages to the vehicle.

4. Brief substance of the counter filed by the second respondent therein is as follows:

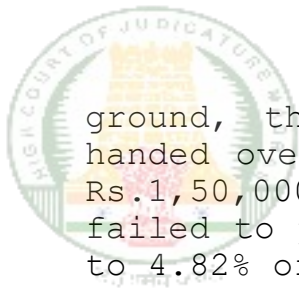
The manner of the accident as narrated in the petition is wrong. The first respondent vehicle was parked on the left edge of the road with parking light. It was the fourth respondent, who was rash and negligent and dashed against the parked vehicle. The respondents 4 and 5 are responsible for the accident.

5. Brief substance of the counter filed by the third respondent therein is as follows:

The fourth respondent was rash and negligent and he was responsible for the accident. Four persons were travelling in the cabin of the mini lorry, which is in violation of policy conditions. The insurance policy is in the name of the fourth respondent. The petitioner is not entitled to claim compensation. The damages are to be proved. The claim is excessive.

6. Brief substance of the counter filed by the fourth respondent therein is as follows:

The vehicle belong to the fourth respondent. R.C. Book stand in the name of the fourth respondent. On 24.09.2002, the vehicle was purchased by the claimant from the fourth respondent. The claimant paid Rs.50,000/- on 24.09.2002 and promised to pay Rs.1,00,000/- on 25.09.2002 and to pay the balance of Rs.2,00,000/- within a period of 20 days. On 24.09.2002, after receiving Rs.50,000/- as advance, the vehicle was handed over to the petitioner. The petitioner paid Rs.1,00,000/- on 25.09.2002 and Rs.50,000/- on 28.10.2002 and there is a balance of Rs.1,50,000/- to be paid by the claimant. On 14.06.2005, the vehicle met with the accident. Only on humanitarian



ground, the fourth respondent at the request of the petitioner, handed over the document on condition that the petitioner will pay Rs.1,50,000/- with 12% interest on 21.10.2006 but the petitioner failed to pay the balance amount. The fourth respondent is entitled to 4.82% of the award amount.

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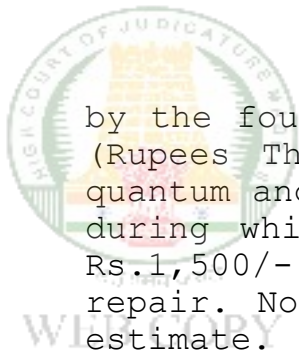
7. Brief substance of the counter filed by the fifth respondent therein is as follows:

The first respondent is responsible for the accident. FIR and chargesheet is registered only against the first respondent. The respondents 4 and 5 are unnecessary parties. It is stated that one Sabaruteen and Anthony were the owners of the vehicle bearing registration No.TN-74-Y-4294. The said Anthony was not impleaded as a party to the petition. The petitioner was not owner of the vehicle at the time of the accident. The petitioner is not entitled to claim compensation.

8. The first respondent was remained set exparte. On the side of the petitioner, one witness was examined and 14 documents were marked. On the side of the respondents therein, one witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation to be paid by the respondents 1 to 3. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

9. On the side of the appellant, it is stated that the claimant was not the true owner of the vehicle at the time of the accident. The fourth respondent by name Stephenson was the registered owner of the vehicle. The fifth respondent is the insurer of the vehicle. It was not correct to state that the first respondent was rash and negligent. The deceased is responsible for the accident. Section 157 of M.V. Act is not applicable to the person who is not the registered owner. Only third party is entitled for the benefits of the deemed transfer envisaged under Section 157 of M.V. Act and that the policy runs with the vehicle. Without transfer of ownership, the benefit under Section 157 of M.V. Act cannot be extended to the claimant. It was the fourth respondent, who was the actual owner who is entitled to claim compensation. There was no justification for the Tribunal to decide that the vehicle was purchased by the claimant without any proof for transfer of ownership. In another claim petition arising out of the same accident filed by one Raymon, son of Mudiappan, the respondent Anthony has been shown to be the registered owner. The claimant failed to produce any bills to prove that he had actually spent any sum for repairing the damages. The claim petition for damages is not maintainable.

10. On the side of the appellant, it is stated that the damages cannot be claimed by a subsequent purchaser under Section 157 of the Motor Vehicles Act. The Tribunal has fixed the second respondent as the party responsible for the accident. The vehicle was sold to the claimant



by the fourth respondent. The value of the vehicle is Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only). The Tribunal fixed the quantum and calculated the loss of income for the period of 60 days, during which the vehicle was stationed in the workshop by fixing Rs.1,500/- per day as rental income. There was no proof of actual repair. No receipts or bills were marked. Ex.P3 is only a copy of estimate. The Tribunal has fixed Rs.2,00,000/- (Rupees Two Lakhs only) as compensation without any evidence. The claimant was duty bound to register the transfer of the vehicle in his name within a period of 14 days from the date of purchase. The condition under Section 157(2) of Motor Vehicle Act was not fulfilled. The claimant is not entitled to claim compensation.

11.It is seen that FIR, Ex.P1 and chargesheet, Ex.P5 are against the first respondent. For claiming damages, the claimant has to prove that he is the owner of the vehicle. The case of the fourth respondent is that balance of sale consideration is still pending to be paid by the claimant. On the date of accident, the vehicle was registered in the name of the fourth respondent and not in the name of the claimant. Evenafter three years from the purchase, the claimant failed to get the vehicle register in his name. In the above circumstances, the claimant failed to prove the ownership.

12.The claimant demanded damages to the vehicle. But the receipt for purchase of spare parts and the receipt for payment for labour for repair work were not furnished by the claimant. Ex.P13 is only an estimate and it is not a receipt. Ex.P13 and Ex.P14 are insufficient to prove the cost of the repair work. The details as to when the vehicle was sent to the workshop for repair works and when the vehicle was delivered after the repair works were not furnished by the claimant. The rent value of the vehicle was also not proved by the claimant. Without ascertaining the above points, the Tribunal has fixed the loss of income for a specific period, in which the vehicle was alleged to have been stationed in the workshop.

13.In the above circumstances, the award passed by the Tribunal is not reasonable. The claimant failed to prove the claim and hence, the Civil Miscellaneous Appeal is **allowed** and the award passed in M.C.O.P.No.87 of 2007 is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

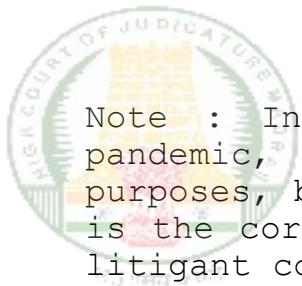
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Sub Assistant Registrar(CS)

MRN

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To

The Sub Judge,
The Motor Accidents Claims Tribunal,
Kuzhithurai.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-126[F]
dated 04/01/2022)

+1 CC to M/s.K.MURUGESAN, Advocate (SR-522[F] dated 06/01/2022)
C.M.A.(MD)No.780 of 2014

04.01.2022

VR(CO)

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