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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.665 of 2020

Senthil Kumar

... Appellant

Vs

1. P.Shanmugam

2. M/s.Iffco Tokio General Insurance Co. Ltd.,
ITGI – Statagic Business Unit
Tulsi Chamber, III Floor,
195, T.v.Saamy Road West,
R.S.Puram, Coimbatore.

... Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the order dated 03.10.2019 and passed in MCOP. No.324 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal and Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.N.Umapathy

For Respondents : Mr.S.Saravanan R1

Mr.S.Arunkumar R2

J U D G M E N T

This appeal has been filed by the appellant/claimant against the order dated 03.10.2019 and passed in MCOP. No.324 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal and Chief Judicial



Magistrate, Coimbatore.

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2. It is the case of the appellant/claimant that on 19.03.2011, when the appellant was travelling in Bolero Maxi Truck bearing Reg. No.TN 37 BE 6856 on Coimbatore-Trichy Road, from east to west direction in front of power office, Pongalur which was driven by the first respondent and insured with the second respondent, in a rash and negligent manner and hit against the stationed lorry bearing Reg. No.TN 28 U 5722 and therefore, the appellant sustained injuries and admitted in the hospital for treatment. Thereafter, the claimant, has filed a claim petition before the Tribunal claiming a sum of Rs.4,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined two witnesses viz., P.W.1 and P.W.2 and marked as many as 5 documents viz., Exs.P1 to P5. On the side of the respondents, there was no witness examined and no documents were marked.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has



awarded a sum of Rs.3,50,000/- as compensation to the claimant.

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5. Challenging the liability fixed the Tribunal, the appellant has come forward with this appeal before this Court.

6. Learned counsel for the appellant submitted that the appellant was travelling with the first respondent truck and the first respondent drove the Maxi Truck in a rash and negligent manner with high speed and dashed against the stationed lorry. The Tribunal ought to have directed the insurance company to pay the compensation and recover the same from the first respondent, who is the owner of the vehicle. The disability caused to the appellant is a serious one and the Tribunal has not awarded any compensation under the head "pain and sufferings". Without considering all these facts, the learned Tribunal has awarded Rs.3,50,000/-, which is meager and the same needs interference.

7. The learned counsel for the first respondent submitted that the Tribunal has rightly fastened the liability as against the first respondent has failed to consider the FIR which clearly shows that the appellant was travelling in a Bolero Maxi Truck and the first respondent was driving



the vehicle. Due to rash and negligent driving of the first respondent, the accident had happened. The Tribunal has rightly assessed the issue and fastended the liability as against the first respondent, which is perfectly in order and the same needs no interference.

8. The learned counsel for the second respondent insurance company submitted that admittedly, the first respondent is the owner of the vehicle and the said vehicle was insured with the second respondent. Further, the appellant was travelling in the first respondent's vehicle at the time of the accident and due to rash and negligent driving of the vehicle, the accident had occurred. The Tribunal, after considering all these facts, fastened the liability as against the first respondent, which is perfectly in order, which does not warrant any interference.

9. Heard the learned counsel for the appellant as well as the respondents and perused the available materials on record before this Court.

10. The facts of the case are not in dispute. Admittedly the first respondent is the owner of the vehicle and he was driving the said



vehicle at the time of the accident and the same was insured with the second respondent insurance company. The said vehicle was hit against the stationed lorry, due to which, the accident had happened and the appellant sustained injuries. It is the main grievance of the appellant that the Tribunal has to fasten the liability as against the insurance company. The learned counsel for the Insurance company submitted that there is a policy violation and the second respondent is not liable to compensate the appellant.

11. Now the issue arises before this Court is that whether the Tribunal has fastened the liability as against the first respondent is correct or not.

12. Admittedly, the said Bolero Maxi Truck is a goods carriage vehicle and as such the gratuitous passenger is not entitled to get compensation. But the owner of the goods is entitled to the compensation. The appellant has stated that he has travelled in the said vehicle along with his goods. However, during cross examination, he has admitted that he has not produced any documents to show that he travelled with the said goods. In the absence of any evidence, the



appellant cannot say that he was travelled along with the goods. Hence, the Tribunal has come to the conclusion that the appellant is travelling as a gratuitous passenger and as per the policy, the insurance company is not liable to compensate the appellant for the injuries sustained. The Tribunal has rightly fastened the liability as against the first respondent, which does not warrant any interference. Further the Tribunal has elaborately adjudicated the issue and passed award, which is just and reasonable.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. No costs.

28.11.2023

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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order

To

The Motor Vehicle Accident Claims Tribunal,
Chief Judicial Magistrate, Coimbatore.



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M.DHANDAPANI.,J.

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