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C.M.A.No.1845 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1845 of 2018

Radhakrishnan

... Appellant

Vs.

1.Rajendran

2.The Divisional Manager,

Royal Sundaram General Insurance Co. Ltd.,

Sundaram Towers, No.45 & 46,

Whites Road, Chennai – 600 014.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 by setting aside the judgment and decree dated 21.01.2016 passed in M.C.O.P.No.1482 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge) Tirupattur.

For Appellant : Mr.V.Parivallal

For Respondents : R1 – Notice Dispensed with
No appearance for R2



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J U D G M E N T

This appeal has been filed by the claimant as against the award and decree dated 21.01.2016 passed in M.C.O.P.No.1482 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge) Tirupattur.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioner is the claimant, the first respondent is the owner of the tractor attached with trailer and the second respondent is the Insurance Company.

4. The brief facts of the case are as follows:

On 04.10.2010 at about 2.45 p.m., the petitioner boarded into the first respondent's vehicle viz., Tractor bearing Registration No.TN 23 BX 5504 attached with trailer bearing Registration No.TN 28 K 6312 for loading and unloading the goods from the vehicle. At the time of boarding, the first respondent's driver suddenly took the vehicle with rash and negligent manner. Due to the said impact, the petitioner suddenly fell down



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from the vehicle and sustained grievous injuries all over the body and got fracture on his right pinna. Immediately after the accident, the petitioner took treatment in Government Hospital, Vaniyambadi and then he was referred to Vellore Medical College and Hospital for further treatment. Thereafter, the petitioner took treatment in Chennai General Hospital. Seeking compensation against the owner of the Tractor attached with Trailer and its insurer M/s.Royal Sundaram General Insurance Co. Ltd., the claimant filed M.C.O.P.No.1482 of 2013 claiming compensation of Rs.5,00,000/-.

5. The first respondent, who is the owner of the offending vehicle, remained *ex-parte* before the Tribunal.

6. The claim petition was contested by the Insurance Company on various grounds and specifically stated that at the time of accident, the petitioner, who attempted to board on the back side of the first respondent's driver i.e. in between the tractor and trailer and he fell down due to intoxication by consumption of Alcohol. That apart, they had disputed the other claims made in the claim petition.

7. To substantiate the case on the side of the claimant, the



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claimant examined himself as P.W.1 and marked documents Ex.P1 to Ex.P8. On the side of the second respondent/Insurance Company, R.W.1 was examined and Ex.R1 to Ex.R3 were marked.

8. The Tribunal, after considering the oral and documentary evidence available on record, had come to the conclusion that the accident is the result of the rash and negligent act of the petitioner i.e due to his intoxication, he met with the accident and he is not entitled for any compensation from the respondents as prayed for and dismissed the claim petition. Challenging the same, the claimant has filed the present Civil Miscellaneous Appeal.

9. The learned counsel for the appellant/claimant submitted that the appellant/claimant was working as a Coolie. As a Coolie, he was trying to board the tractor attached with trailer for loading and unloading the goods from the vehicle and at that time, the driver of the said offending vehicle took the vehicle suddenly with rash and negligent manner and that the claimant fell down and sustained injuries all over his body. Since the accident took place only due to the rash and negligent act of the driver of the offending vehicle, the first respondent being owner and the second



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respondent being the insurer of the offending vehicle, are jointly and severally liable to pay compensation to the petitioner. He further submitted that the duty is cast upon the driver to ascertain as to whether the worker boarded the trailer or not. In this case, without ascertaining that, all of a sudden, the driver started the vehicle, due to which the petitioner fell down and sustained injuries. As the petitioner is a poor Coolie, the Tribunal ought to have allowed the claim petition and awarded compensation as claimed by the claimant, but without considering the material facts, the Tribunal dismissed the claim petition.

10. Heard the learned counsel for the appellant and perused the records. There was no representation for the second respondent.

11. The manner of the accident is admitted. The present appeal has been filed only questioning the non-fixing liability on the part of the owner and Insurer of the said offending vehicle.

12. The Points for consideration :

(i) Whether the accident had occurred due to rash and negligent driving of the driver of the Tractor bearing



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Registration No.TN 23 BX 5504, attached with trailer bearing

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(ii) Whether the second respondent, as the Insurer
of the offending vehicle is liable to pay compensation?

13. To decide the issues, on a perusal of the records, it is seen that the claimant examined himself as P.W.1 and he has deposed that he was working as a Coolie and he was trying to board into the trailer for loading and unloading the goods from the vehicle and at that time, he fell down and sustained injuries, due to rash and negligent act of the driver of the offending vehicle by suddenly moving the vehicle, whereas, during cross examination, the petitioner has clearly stated that he was not a Coolie in the said tractor and he was working as a coolie in some other place. On the date of accident, after finishing his lunch, he was about to move to his working place and at that time, he saw the offending vehicle started to move suddenly, and he thought that the offending vehicle is going to his working place and that he tried to board on the back side of the driver i.e., in between the tractor and trailer and at that time, the driver of the offending vehicle



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suddenly took the vehicle in a rash and negligent manner. Due to the said impact, the petitioner sustained injuries. Quite naturally, the driver of the offending vehicle would not have expected the petitioner or any one boarding the vehicle from behind, when the vehicle started to move. Further, the petitioner admitted that at the time of accident, he was under the influence of intoxication and to prove the same, Ex.P2 and Ex.R2 were marked. At the time of accident, the claimant was travelling as gratuitous passenger and he boarded into the vehicle under the influence of intoxication and that he fell down and sustained injuries. Therefore, the evidence of the appellant/petitioner clearly shows that the accident had not occurred due to rash and negligent driving of the driver of the offending vehicle.

14. This Court, as a final Court of fact finding, re-appreciated the entire evidence and finds that at the time of accident, the appellant unauthorizedly tried to board the offending vehicle from the back side of the first respondent's driver and under the influence of intoxication, he fell down and sustained injuries. Therefore, the driver of the first respondent is



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not responsible for the accident and the accident had happened only due to rash and negligent act of the petitioner. Therefore, the appellant is not entitled for any compensation from the respondents. The points are answered accordingly.

15. Considering the facts and circumstances, the appeal sans merit and the same is accordingly dismissed. There shall be no order as to costs in the present appeal.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Tirupattur.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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