



C.M.A.No.3527 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3527 of 2014

P.Sakthivel

...Appellant

Vs.

1. S.Srikanth
2. The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai – 600 001.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the fair and decreetal order in M.C.O.P.No.2921 of 2009 dated 16.11.2011 on the file of the MACT Court of Small Causes, Chennai (VI Small Causes Court, Chennai).

For Appellant : Mr.S.P.Parthasarathy

For Respondents : Notice dispensed with, for R1
Mr.J.Chandran, for R2



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JUDGEMENT

Challenging the judgment and decree dated 16.11.2011 made in M.C.O.P.No.2921 of 2009 on the file of the MACT, VI Small Causes Court, Chennai, the claimant is before this Court.

2. The case of the appellant is that, on 27.02.2008 at about 8.40 am, when the appellant was travelling as a pillion rider in the motorcycle bearing Regn.No.TN-07-X-8395, owned by the 1st respondent, insured with the 2nd respondent from Tambaram to Maduravoyal Bypass road, near Paraniputhur, the rider of the above said motorcycle drove the same in rash and negligent manner and dashed against an Auto-rickshaw, due to which the appellant sustained multiple injuries. Thereby, the appellant filed a claim petition claiming a compensation of Rs.6,00,000/-. After contest, the Tribunal vide impugned judgement dismissed the claim made by the appellant. Aggrieved by the said order, the appellant has preferred this appeal.

3. Learned counsel for the appellant submitted that the 1st respondent's



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vehicle was driven by its driver in a rash and negligent manner, which resulted in the above said accident and therefore, the owner of the motorcycle/1st respondent and the insurer/2nd respondent are jointly and severally liable to pay compensation to the appellant/claimant. However, without considering the said fact, mechanically the Tribunal had dismissed the claim petition filed by the appellant which requires interference of this Court. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, while in the FIR, the claimant has stated that the Auto-rickshaw which came in the opposite direction was driven in a rash and negligent manner due to which the above said accident happened, when later in point of time, changing his stance, the appellant/claimant had claimed that compensation has to be paid by the 1st respondent since the driver of the 1st respondent vehicle had driven the motorcycle in rash and negligent manner. The contra stance taken by the appellant clearly reveals that, only for the purpose of getting compensation, the appellant/claimant is trying to fasten the liability on the 1st respondent which has been properly adjudicated by the Tribunal by dismissing the claim



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made by the appellant, which does not warrants interference of this Court.

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5. Heard learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties and the injuries suffered by the appellant is also not in dispute. Therefore, this Court is not entering into the said aspects. The only issue that is disputed is the liability of the 1st respondent/owner of the motorcycle to pay compensation which is to be indemnified by the 2nd respondent for the reason that the appellant/claimant claims that the driver of the 1st respondent motorcycle driven the vehicle in a rash and negligent manner.

7. A perusal of the FIR marked as Ex.P1 reveals that, initially the appellant/claimant while giving the FIR has pointed the finger on the Auto-rickshaw stating that it was driven in a rash and negligent manner, however, when the claim petition was filed, the appellant has changed his stance and had pointed the finger against the driver of the 1st respondent vehicle stating that



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he had driven the vehicle in a rash and negligent manner.

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8. There is no material available on record, produced by the appellant to show that the driver of the 1st respondent vehicle has driven the same in rash and negligent manner. In the absence of any proof to show that the 1st respondent's vehicle was driven in a rash and negligent manner, the FIR which was anterior in point of time assumes significance where the claimant has categorically stated that the Auto-rickshaw was driven in rash and negligent manner.

9. The contra stance taken by the appellant defeats his claim and clearly exhibits that only to claim compensation in the hands of the 2nd respondent/ Insurance company, the driver of the 1st respondent is fastened with the negligence of rash and negligent driving.

10. The aforesaid facts have been properly appreciated by the Tribunal and thereby the Tribunal has negated the claim petition filed by the appellant and this Court is in agreement with the findings arrived at by the Tribunal and



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no interference is warranted.

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11. For the reason aforesaid, this appeal stands dismissed, confirming the award passed by the Tribunal in M.C.O.P.No.2921 of 2009 dated 16.11.2011. There shall be no order as to costs in the present appeal.

11.10.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accident Claims Tribunal/
VI Small Causes Court, Chennai.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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