



WEB COPY



C.M.A.No.1484 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1484 of 2019

R.Suresh Kanna

... Appellant

Vs.

1.Rasheed
2.S.Kandasamy
3.S.Krishnasamy

4.M/s.United India Insurance Co. Ltd.,
Divisional Office – IV,
Coimbatore – 641 037.

5.S.Gunasekaran

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the dismissal order passed in M.C.O.P.No.203 of 2007 dated 10.08.2012 on the file of the Hon'ble Motor Accidents Claims Tribunal – cum – I Additional Sub Judge, Coimbatore.

For Appellant : M/s.V.Sivakumar
For Respondents : R1 and R3 – No Appearance
R2 – Unclaimed
Ms.I.Malar for R4
R5 – Not Ready Notice



C.M.A.No.1484 of 2019

J U D G M E N T

WEB COPY

This appeal has been filed seeking to set aside the judgment and decree dated 10.08.2012 passed by the Motor Accidents Claims Tribunal – cum – I Additional Sub Court, Coimbatore, in M.C.O.P. No.203 of 2007.

2.The brief facts of the case is that on 17.11.2004 at about 6.30p.m., the appellant was riding the motor cycle T.V.S. Max 100R – TN 38R 5891 along with his friend Praveen as pillion rider at Pollachi to Coimbatore Main Road towards Athupalam near Mariamman Koil and Ayyanar Koil. At that time, a motor cycle TVS AX 100 – TDI 3406, came in the opposite direction in a rash and negligent manner and dashed against the motor cycle driven by the appellant, due to which, the appellant as well as his friend were thrown in the centre of the road. At the same time, a Tempo TATA 407 bearing Registration No.TN33Z 3798 came in a rash and negligent manner from the backside of the appellant's vehicle and ran over the appellant.

3.Thereafter, the injured claimant/ appellant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Motor Accidents Claims Tribunal



C.M.A.No.1484 of 2019

rejected the claim petition. Aggrieved by the same, the appellant claimant has filed this appeal.

4.The learned counsel appearing for the appellant submitted that that the appellant was riding the motor cycle owned by the fifth respondent and the same was not insured with any of the Insurance Company. The appellant also not possess valid licence at the relevant point of time. Similarly, the first respondent who drove the motor cycle owned by the second respondent also not possessed any valid licence and the vehicle was not insured with any of the Insurance Company. The respondents 3 and 4 are equally liable for the accident since the third respondent's vehicle ran over the appellant and the same has been insured with the fourth respondent.

5.The learned counsel appearing for the appellant further submitted that inorder to prove the negligence, the appellant examined P.W.2 – eye witness and P.W.2 in his evidence, clearly deposed the manner in which the accident happened, however, the Tribunal arrived at a conclusion that the appellant failed to prove the negligence on the side of the respondents 1 and 3 and rejected the claim petition, which is not sustainable.



C.M.A.No.1484 of 2019

WEB COPY

6. Heard the learned counsel appearing for the appellant claimant and the learned counsel appearing for the fourth respondent Insurance Company. Though notice has been served on the respondents 1 and 3, today when the matter is taken up for consideration, there is no representation for the respondents 1 and 3. The appeal is of the year 2019, however, till date, the appellant has not taken any effective steps to serve notice on the respondents 2 and 5. Considering the pendency of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

7. The appellant claim that the appellant without any valid licence drove the motor cycle owned by the fifth respondent and the accident took place while he was proceeding towards Athupalam near Mariamman Koil and Ayyanar Koil. The appellant further claims that he did not lodge the complaint immediately after the accident and taking advantage of the same, the father of the first respondent on his own made the complaint as if the appellant was riding the motorcycle and tried to overtake the vehicle owned by the third respondent and at that time, unknown vehicle came and thereby the



C.M.A.No.1484 of 2019

vehicle owned by the third respondent dashed against the appellant.

F.I.R. is not conclusive proof and it was engineered by the first respondent. Subsequently, law enforcing agency recorded the statement of the appellant. Thereafter criminal case was registered and it ended in acquittal in favour of the appellant and the above said facts were not disputed.

8.However, the appellant claim that the appellant was riding the motor cycle and one Praveen was travelling as pillion rider, however, the said Praveen was not examined as witness and his name was not mentioned in the F.I.R. Ex.P.5 – discharge summary makes it clear that immediately after the accident, the appellant was admitted in nearby Government Hospital, however, the appellant did not produce any AR copy before the Tribunal. Only AR copy will reveal the manner in which the accident happened and the condition of the appellant.

9.The Tribunal after considering all the factual aspects arrived at a conclusion that the appellant failed to prove the negligence on the side of the respondents 1 and 3 and rejected the claim petition, which warrants no interference.



C.M.A.No.1484 of 2019

WEB COPY

10.The civil miscellaneous appeal is dismissed. The judgment

M.DHANDAPANI,J.

and decree passed in M.C.O.P.No.203 of 2007 dated 10.08.2012 by
the Motor Accidents Claims Tribunal – cum – I Additional Sub Court,
Coimbatore, is confirmed. No costs.

08.11.2023

pri

Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal – cum –
I Additional Sub Court,
Coimbatore.

C.M.A.No.1484 of 2019

08.11.2023

6/6



WEB COPY



C.M.A.No.1484 of 2019