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C.M.A. No.2272 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2272 of 2018

Sivaguru

... Appellant

Vs.

1.I.Rizvan

2.The Branch Manager

New India Assurance Company Ltd.

Premier Complex

No.102, Yercaud Junction Road,

Salem - 7

3.G.Bhaskar

4.The Branch Manager

National Insurance Company Ltd.,

Second Floor,

Thanthai Periyar Market Complex,

Opp. to Old Bus Stand

Govindasamy Pillar Street, Salem

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the Judgment and Decree dated 26.08.2010 made in MCOP No.1773 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Krishnagiri.



For Appellant : Mr.M.V.Bibin Mahesh

For Respondents : Mr.Sunny Sheen Akkara for
M/s.V.Srimathi for R3
Mr.D.Bhaskaran for R4
R2-No Appearance
R1-Substituted Service (Paper
Publication) filed.

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and Decree dated 26.08.2010 made in MCOP No.1773 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Krishnagiri.

2. The appellant is the claimant. The respondents 1 and 2 are the owner and insurer of the tanker lorry bearing Regn. No.TN28-B-8799. The respondents 3 and 4 are the owner and insurer of the Eicher Van bearing Regn. No.TN-29-H-4650 in which the appellant/claimant traveling at the time of accident.



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3. The case of the claimant is that he was working as a driver and one Udayakumar was working as a cleaner under the 3rd respondent. On 08.06.2006 at about 14.30 hours, the claimant was driving the Eicher Van bearing Regn. No.TN-29-H-4650 belonging to the 3rd respondent and insured with the 4th respondent along with the said Udayakumar, opposite to the Balaji Maligai Stores, Kurunji Nagar on Thoppur-Dharmapuri Road. At that time, a tanker lorry bearing Regn. No.TN28-B-8799 belonging to the 1st respondent and insured with the 2nd respondent was going in front of their Eicher Van. While so, the driver of the tanker lorry, without following any Rules of the road and without showing any signals and also without minding the vehicles coming on the rear side of his lorry, had suddenly stopped his tanker lorry in the middle of the road. The claimant who did not anticipate the sudden stopping of the tanker lorry, applied sudden brake. In spite of that, his Eicher Van slightly dashed the rear side of the tanker lorry and due to the sudden impact, both the driver and cleaner of the Eicher van sustained injuries.

4. The claimant had filed a claim petition in MCOP No.1773 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial



Magistrate Court, Krishnagiri, claiming compensation of Rs.5,00,000/- against the respondents 1 and 2 who are the owner and insurer of the offending tanker lorry and that the respondents 3 and 4 were added as formal parties, stating that due to the accidental injuries, he was taken to the hospital and in his absence, the driver of the tanker lorry, has given a criminal complaint against the claimant/driver of the Eicher van. Further, due to the accidental injuries, the claimant was unable to sit, squat and walk and due to the comminuted fracture of the acetabulum, his right leg movements are restricted and painful, often getting pain in the leg, unable to lie in the bed and bend the body. Thus, he sustained permanent disability and loss of future earning capacity. He needs the help of others to attend his routine duties and also not able to drive the vehicle and thereby, he cannot earn as he was earning before the accident.

5. The cleaner of the Eicher vehicle had also filed a claim petition in MCOP No.1772 of 2006. Since both the petitions were arising out of the very same accident, the Tribunal heard both the petitions together and delivered a common judgment. On the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 12 documents were marked as Ex.P.1 to



Ex.P.12. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R.1 and Ex.R.2.

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6. Before the Tribunal, the respondents 1 and 3 were set ex-parte.

7. The learned counsel for the appellant/claimant would submit that on the date of accident the appellant/claimant was driving the Eicher Van bearing Regn. No.TN 29-H-4650 belonging to the 3rd respondent and insured with the 4th respondent. At the time of accident, the driver of the tanker lorry bearing Regn. No.TN25-B-8799 belonging to the 1st respondent and insured with the 2nd respondent who was going in front of the appellant/claimant's Eicher Van, all of a sudden, stopped his lorry. The appellant/claimant, could not control the speed of his Eicher Van and thereby, he dashed behind the tanker lorry due to which, the appellant/claimant sustained injuries and became unconscious and was taken to the hospital. By that time, the driver of the tanker lorry, lodged a complaint before the police and FIR was registered against the appellant/claimant. Since, the FIR was registered against the appellant/claimant, the Tribunal wrongly fixed the liability on the appellant/claimant and the Tribunal failed to consider the fact that the



accident had occurred since the driver of the tanker lorry had stopped his lorry all of a sudden in the middle of the road without observing the traffic Rules. He would further submit that the cleaner of the said Eicher Van who had travelled with the appellant/claimant at the time of accident, had also sustained injuries. Subsequently, he also filed a claim petition in MCOP No.1772 of 2006 and the Tribunal awarded compensation to him, whereas, the Tribunal dismissed the claim petition filed by the appellant/claimant and that the findings of the Tribunal regarding the liability is erroneous and hence, the same is liable to be set aside.

8. The learned counsel for the 4th respondent/Insurer of the Eicher Van, would submit that the driver of the tanker lorry had stopped the vehicle on the road side for taking refreshment, whereas, the appellant/claimant who drove the Eicher Van in a rash and negligent manner, dashed at the backside of the tanker lorry. Even the Motor Vehicle Inspector's report clearly shows that the front side of the Eicher Van and the back side of the tanker lorry got damaged which clearly shows that the accident had happened due to rash and negligent driving of the appellant/claimant himself. Since the appellant/claimant is the tort-feasor, the 4th respondent/Insurance



Company who is the Insurer of the Eicher Van, is not liable to pay any compensation. Therefore, the Tribunal rightly dismissed the claim petition filed by the appellant/claimant, however, allowed the claim petition filed by the Cleaner who traveled in the said Eicher Van along with the appellant/claimant and sustained injuries at the time of accident. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

9. Though paper publication was effected and notice was served on the respondents 1 and 2, there was no representation for the respondents 1 and 2.

10. Heard the learned counsel for the appellant and the learned counsel for the 4th respondent and perused the entire materials available on record.

11. Admittedly, the accident is not in dispute. The only dispute is that the manner of accident and the liability. Admittedly, the FIR is registered against the appellant/claimant. However, the FIR is not an Encyclopedia. Hence, the Tribunal need not follow the contents mentioned in the FIR alone



and need not take the materials in the other proceedings like criminal proceedings. The Tribunal has to consider the materials which are placed before it. Though the FIR is registered against the appellant/claimant, there was no counter complaint filed by the appellant/claimant. Though the learned counsel for the appellant/claimant vehemently contended that due to the accident, he sustained injuries and became unconscious and thereby, he could not go and lodge a complaint to the police, the fact remains that even after the driver of the tanker lorry lodged a complaint against the appellant/claimant, he has not given any complaint and though the appellant/claimant stated that after taking treatment, he lodged a complaint but, the police refused to register the same, there is no material to substantiate the same. Further, he has admitted that the front side of his Eicher vehicle got damaged and the back side of the tanker lorry got damaged. When the driver of the tanker lorry was examined as R.W.1, he has deposed before the Tribunal that the accident had happened only due to the rash and negligent driving of the appellant/claimant. He has also stated that he had parked his lorry only on the mud side of the road at the time of accident and the appellant/claimant drove the vehicle with rash and negligent manner and dashed behind his lorry which is also corroborated with the report of Motor Vehicle Inspector and he



has not denied the same and contra to the evidence of R.W.1, the appellant/claimant has not produced any materials to show that the driver of the lorry only all of a sudden stopped the lorry in the middle of the road without observing the traffic Rules and due to which, the appellant/claimant could not control the speed of his vehicle and dashed against the lorry. Therefore, in the absence of the same, this Court finds that there is no reason to interfere with the findings given by the Tribunal.

12. This Court while re-appreciating the entire evidence, finds from the available materials and technical report that due to the accident, the front side of the Eicher van which was driven by the appellant/claimant and the backside of the tanker lorry got damaged which clearly shows that the appellant/claimant only has dashed the back side of the tanker lorry.

13. Though the learned counsel for the appellant/claimant submitted that R.W.1 all of a sudden stopped the lorry in the middle of the road without observing the traffic Rules, it has not been established by the appellant/claimant. Further, there is no contra evidence to the evidence of the R.W.1 and the FIR. Even assuming that the driver of the tanker lorry all of a



sudden had stopped the tanker lorry, if the appellant/claimant was cautious and maintained a distance while driving the van by observing road traffic rules, he could have avoided the accident. Therefore, the contention of the learned counsel for the appellant/claimant is not acceptable unless it is proved with contra evidence which is available.

14. Under these circumstances, this Court does not find any perversity in the appreciation of evidence by the Tribunal and there is no reason to interfere with the findings of the Tribunal. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate Court), Krishnagiri.

2. The Section Officer,
VR Section, High Court, Madras.

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P.VELMURUGAN. J.

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