



C.M.A.No.1374 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1374 of 2017

K.M.Sirajudeen (died)

2.S.Rahmath

3.A.Mubeena Begam

4.Mohammed Ali

... Appellants

[Sole appellant died. Appellants 2 to 4 brought on record as Lrs of the deceased sole appellant vide Court order dated 27.02.2023 made in C.M.P.Nos.3367, 3371 & 3372 of 2023 in C.M.A.No.1374 of 2017]

Vs.

1.M.Charles

2.The Additional DIGP,
CRPF Pujare,
Haryana.

3.The Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi – 110.

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgment and Decree dated 05.10.2016 passed in M.C.O.P.No.1815 of 2013 on the file of the Motor Accident Claim Tribunal (Special Subordinate Judge), Coimbatore, and enhance the award amount.

For Appellants : Mr.A.Tamilarasan

For Respondents

For R1 : Mr.R.Poovalingam

For R2 : Mr.C.Samivel
Senior Panel Central Govt. Standing
Counsel

For R3 : Mr.N.Rajan
Senior Panel Central Govt. Standing
Counsel

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, in M.C.O.P.No.1815 of 2013 on 05.10.2016.



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2. It is the case of the appellant that on 29.03.2013 at about 20.00 hours, the petitioner herein after closing down his office and when riding his Mahindra Duo two wheeler bearing Registration No. TN-66-F-6118 along with one R.Navinkumar as pillion rider proceeding in the Pollachi main road from north to south and stopped the vehicle on seeing red light signal in front of B-12 Police Station, at the time the 1st respondent driving the offending vehicle LMV GV (Swaraj Mazda) bearing Registration No. HR-68-1543 came in the same direction from north to south in a rash and negligent manner with over speed and dashed against the petitioner's vehicle and caused an accident. As a result of the accident, the petitioner sustained multiple grievous injuries and took treatment as in-patient from 29.03.2013 to 30.03.2013. Hence, the petitioner has filed a petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation from the respondents together with interests and costs for the injuries sustained by him.

3. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked and on the side of the respondents R.W.1 was examined and Ex.R1 was marked.

4. On perusal of oral and documentary evidence the Tribunal has fixed



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the negligence on the part of the claim petitioner and dismissed the claim petition filed by the claim petitioner.

5. Learned counsel for the appellant submitted that the Tribunal has miserably failed to consider all the documents filed by the appellant and dismissed the petition. He further submitted that the Tribunal failed to note that from the evidence of P.W.1 and Ex.P1 (FIR copy), which has been proved that the 1st respondent came behind in a rash and negligent manner and dashed behind the vehicle of the appellant and due to the said accident, the appellant sustained grievous injuries. Therefore, the Tribunal ought to have fixed negligence on the part of the 1st respondent. The Tribunal failed to note that the greater responsibility is on the 1st respondent as he was attempting to cross the traffic signal with over speed while the appellant stopped his vehicle in signal. The Tribunal overlooked the facts that if really the van dashed against the rear side of the two wheeler then the pillion rider too would have sustained injuries, but the pillion rider had not sustained any injury and instead of the appellant, who rode the vehicle, sustained grievous injuries, without any injuries being caused to the pillion rider. The Tribunal overlooked that the evidence of R.W.1 and Ex.P.3 and Ex.P.4 reports that means that the appellant himself is



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responsible for the said accident. The Tribunal failed to consider that due to the accident the injured has sustained disability to an extent of 31% for the injuries namely, Fracture of Right Distal radius with fracture of Right Ulna Lower 1/3rd, which has been supported by the evidence of P.W.2-Doctor and Exhibit P.10. Therefore, the order passed by the Tribunal has to be set aside.

6. Respondents in the counter affidavit filed before the Tribunal contended that the 1st respondent is the driver of Swaraj Mazda vehicle involved in the accident and the 2nd respondent is the owner in whose name the RC was issued and the 3rd respondent is the Chief of the Department in the chain of Command. These respondents deny the age, avocation, income and earning prospects of the petitioner. The petitioner is aged person who cannot handle a sturdy scooter in general and during night hours in particular. The accident occurred due to the negligence and carelessness of the petitioner who lost his control while he was riding his vehicle and he was the one who hit the respondent's vehicle. The respondents further contended that at the time of accident the petitioner was riding his two wheeler along with a pillion rider and this was admitted by the petitioner in his petition, but it is not understood that how the rider alone was reportedly injured leaving the pillion rider if what he



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averred that the respondent's vehicle hit his scooter from behind. In that case, the pillion rider would have been the first person to get hit and get injured.

7. The respondent further contended that since the two wheeler hit the CRPF vehicle as a result of which the rider who was riding and in front sustained injuries. So from this it is evident that the petitioner was the one who hit this respondent's vehicle and also the photographs of the two wheeler was damaged and there was no damage on the rear side of the two wheeler. It is clearly evident that this respondent's vehicle has not hit the two wheeler. But on the other hand, the petitioner was the one who hit this respondent's vehicle by losing his control. Thus the petitioner himself invited injuries to himself and neither the respondents nor their vehicle contributed to the accident in question in any manner whatsoever. Therefore, the accident occurred only because of the careless and negligent riding of the petitioner who hit the respondent's vehicle by losing his control. Hence, this appeal is to be dismissed.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.



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9. It is seen from the records that the appellant has failed to produce relevant documents such as admission slip or wound certificate issued by the K.G.Hospital, Coimbatore, where the injured had taken treatment initially. Further, the pillion rider one R.Naveen Kumar has not been examined by the Trial Court. Therefore, this Court is inclined to grant an opportunity to the appellant to file those documents related to the accident and directed to examine the said R.Navinkumar, pillion rider.

10. In view of the above, this Court is of the view that it would be appropriate to remand the matter back to the Motor Accident Claims Tribunal cum Special Subordinate Judge, Coimbatore, for reconsideration.

11. Accordingly, the order passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore, in M.C.O.P.No.1815 of 2013 dated 05.10.2016 is set aside and the matter is remanded back to the Court below for fresh consideration.

12. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.



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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
The Motor Accident Claim Tribunal, Special Subordinate Judge,
Coimbatore.

A.A.NAKKIRAN.J.

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