



CMA(MD).No.483 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.03.2023

PRONOUNCED ON : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.483 of 2020

1.The Superintendent of Police
District Police Office
Sivagangai District

2.The District Collector
Sivagangai District

... Appellants

vs.

1.K.Selvaraj

2.The Duty Driver
Tata Sumo
TN-63-G-0340 dated 21.06.2015
Sivagangai District Police
Sivagangai

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicles Act, 1988, to set aside the order dated 15.10.2019 made in MCOP.No.161 of 2016 before the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Pudukkottai and allow the Civil Miscellaneous Appeal.



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For Appellants : Mr.N.GA.Natraj
Government Advocate
For R1 : Mr.K.S.Muthu
For R2 : Mr.G.Thiruvartselvan

J U D G M E N T

The appeal has been filed by the respondents in the claim petition challenging the liability arising out of the award in MCOP.No.161 of 2016 on the file of Motor Accident Claims Tribunal, Pudukkottai.

2.The injured claimant had filed the above claim petition contending that while he was driving his two wheeler on 21.06.2015 from South to North, a Tata-Sumo vehicle belonging to the Police Department came from rear side and dashed against the motor bike of the claimant which resulted in grievous injuries to the claimant.

3.According to the claimant, the Tata-Sumo Jeep was driven in a rash and negligent manner and hence, the driver of the said vehicle alone is responsible for the accident. The claimant has sought for a sum of Rs.30 lakhs towards compensation.

4.The respondents had filed a counter contending that the injured claimant was under the influence of alcohol and he had dashed on the



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rear side of the Tata-Sumo vehicle and it has resulted in the said accident. Since the accident was under the influence of alcohol and dashed against the rear portion of the Tata-Sumo vehicle, the respondents are not liable to pay any compensation. The have further contended that the claimant having taken treatment in a Government Hospital and he has not produced any document to establish his permanent disability, and have not entitled to receive any compensation.

5.The Tribunal after considering the oral and documentary evidence, arrived at a finding that the driver of the Tata-Sumo alone was responsible for the accident. The Tribunal relied upon Exhibit P9 disability certificate and arrived at a finding that the claimant has suffered 50% disability and has calculated the permanent disability at Rs.1,50,000/-. Rs.1,00,000/- towards pain and suffering and Rs.12,159/- towards medical expenses. Rs.10,000/- towards transport expenses and another Rs.10,000/- for extra nourishment. The Tribunal further arrived at a finding that no records have been placed before the Court to the effect that the injured claimant was under the influence of alcohol at the time of accident and proceeded to award Rs.2,82,159/- as compensation. This award is under challenge in the present appeal.



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6.The learned counsel for the appellants had contended that the injured claimant was under the influence of alcohol at the time of accident. This is evident from Exhibit R3 which is the wound certificate issued by the Government Hospital, Pudukkottai. The accident had taken place at about 3.00 p.m on 21.06.2015. The injured claimant was admitted at 4.30 p.m on the said date to Government Head Quarters Hospital, Pudukkottai. The Resident Medical Officer, on examination, he has recorded that the claimant was under the influence of alcohol. When the said record was placed before the Tribunal, the said Exhibit R3 has not been properly appreciated by the Tribunal and has arrived at an erroneous finding that no records have been placed before the Court relating to drunken driving.

7.The learned counsel for the appellants had further contended that the Motor Vehicle Inspector's report of the Tata-Sumo has been marked as Exhibit R1. Sl.No.13 of the said report indicates that the scratch marks are found on the rear bumper of the Tata-Sumo. This has been misunderstood by the Tribunal as scratch mark on the front bumper of the Tata-Sumo and has proceeded to fix the negligence on the part of the driver of the Tata-Sumo.



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8.A careful perusal of Exhibit R1-Motor Vehicle Report will clearly indicate that there are scratch marks only on the rear bumper of the Tata-Sumo which would confirm the defence of the respondent that only the injured claimant had dashed against the Tata-Sumo vehicle on its rear side. When the injured claimant had dashed against the Tata-Sumo of its rear side, the Tribunal was in error in fixing the negligence on the part of the driver of the Tata-Sumo.

9.The learned counsel for the appellants had further contended that the Tribunal had erroneously placed much reliance upon Exhibit P1-F.I.R which was lodged by the injured claimant contending that the Tata-Sumo vehicle had dashed against the rear side of the bike. When a complaint is lodged by the injured person, naturally he will make allegation as against the other vehicle as offending vehicle. He had further contended that just because no other complaint was lodged by the police officials, the Tribunal cannot arrive at a finding that the accident had happened in the manner described in the F.I.R. Since there are only minor scratches on the rear bumper of the Tata-Suma, no complaint was lodged by the police officials. This cannot be taken advantage by the injured claimant to contend that the police officials have not laid any



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complaint as against the claimant. Therefore, he prayed for allowing the appeal and setting aside the award passed by the Tribunal as against the appellants.

10.Per contra, the learned counsel appearing for the respondents had contended that Exhibit R3-Wound Certificate has not been marked before the Tribunal and therefore, the same cannot be relied upon by the appellant in the present appeal. He had further contended that unless proper tests are conducted, the injured claimant cannot be considered to be under the influence of alcohol by a mere reference of the duty Doctor in his wound certificate. He had further contended that the claimant has sustained grievous injuries only because of the fact that the Tata-Sumo vehicle had dashed against the rear portion of the motor bike. If really the bike had dashed against the police vehicle, they would have certainly registered an F.I.R. The very fact that the police officials have not initiated any action would clearly establish the fact that the police vehicle alone was responsible for the accident. He had further contended that the suggestion put to the injured claimant during the cross examination in relation to the drunken driving have been rejected, the other suggestion put to the injured claimant relating to the dashing of the motor bike on



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the rear side of the Tata-Sum has also been answered in negative by the injured claimant. Therefore, no legal evidence has been brought on record by the appellants to establish that the injured claimant was under the influence of alcohol or the bike dashed against the rear side of the Tata-Sumo vehicle. Therefore, he prayed for sustaining the award passed by the Tribunal.

11.I have considered the submissions made on either side and perused the materials available on record.

12.It is the specific case of the claimant that the vehicle belonging to the Police Department namely Tata-Sumo had dashed against the rear side of the bike which had resulted in the accident. However, the police officials have contended that the injured claimant under the influence of alcohol had dashed against the rear side of the Tata-Sumo.

13.A perusal of Exhibit R1-Motor Vehicle Report of the Tata-Sumo clearly discloses that there are scratch marks on the rear bumper of the Tata-Sumo. The said report does not disclose any damage to the front bumper of the said vehicle. This report has been interpreted by the Tribunal under a misunderstanding that a bumper is always on the front side of the vehicle.



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14. In the counter affidavit, the appellants have taken a specific stand, the bike had dashed against only on the rear side of the Tata-Sumon. Their counter is supported by the Motor Vehicle Report marked as Exhibit R1. Therefore, it is clear that the accident has not happened in the manner as described in the claim petition. Only the injured claimant had dashed against the rear side of the Tata-Sumo vehicle belonging to the Police Department.

15. The Tribunal had mainly proceeded to fix the liability on the Tata-Sumo on the ground that the police officials have not lodged any complaint as against the injured claimant. The Motor Vehicle Report will clearly disclose that only some scratches are there on the rear bumper of the vehicle and therefore, the police officials did not think it appropriate to lodge a complaint as against the claimant, especially when he had injured himself seriously. Therefore, the non-filing of any complaint on the side of the police officials cannot be taken advantage of by the claimant.

16. The Tribunal had further found that the appellants have not produced any document to establish that the injured claimant was under



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the influence of alcohol at the time of accident. The appellants have marked Exhibit R3 which is the wound certificate issued by the Resident Medical Officer, Government Head Quarters Hospital, Pudukkottai. This certificate has been issued within 1 ½ hours from the time of the accident on the same day. A perusal of the report indicates that it has been recorded by the Medical Officer that the patient was under the influence of alcohol. The said report has been referred to in the proof affidavit filed by RW1 who is the driver of the Tata-Sumo. A perusal of the said document also indicates that there is a seal by the Tribunal indicating that it is marked as Exhibit R3. However, it is not been reflected in the order of the Tribunal in the list of documents on the side of the respondents. Therefore, it is clear that the Tribunal had inadvertently omitted to look into Exhibit R3- wound certificate issued by the Medical Officer which reflects that the injured claimant was under the influence of alcohol at the time of accident.

17.The Hon'ble Surpeme Court in a judgement reported in **(2021) 7 SCC 704 (Iffco Tokio General Insurance Company Limited Vs. Pearl Beverages Limited)** has held that the breath analysis test is not



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necessary and a report of the Doctor relating to the fact that the patient was under the influence of alcohol is enough to hold that the injured/deceased was under the influence of alcohol. In the said judgement Paragraph No.84 has held as follows:

“84...At the hospital, in the medico-legal report, there is reference to breath of alcohol (+). It is, however, true that the insurer or his agent may not have been given notice at that stage. We also agree that it would not be proper or legal to hold that in such circumstances, the insurer would still be in a position to prove through a breath test or blood test that the driver was under the influence of alcohol. If the driver having regard to the fact did not suffer any fresh injury is discharged from the hospital and goes away, we find it inconceivable as to how the insurer could be at fault for not having a breath or blood test conducted....”

18. Therefore, the contention of the learned counsel appearing for the respondents that the breath analysis test or blood test was not conducted to establish the influence of alcohol is not legally sustainable.

19. The deliberations in the Paragraph supra will clearly indicate that the injured claimant had dashed against the rear portion of the Tata-Sumo vehicle under the influence of alcohol. No oral or documentary evidence has been placed before the Court by the injured



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claimant that the driver of the Tata-Sumo was in any way responsible for the accident.

20.It is not the case of the claimant that the driver of the Tata-Sumo had applied brake suddenly and that has resulted in dashing of the motor bike coming from the rear side. When no negligence could be attributed to the driver of the Tata-Sumo, the question of fixing the liability to pay compensation on them does not arise.

21.The appellants have taken a specific stand that the injured was not having driving license at the time of the accident. Exhibit R2 which is the motor vehicle report of the bike in which the injured claimant had travelled would indicate that the injured claimant did not have any driving license or insurance policy for the said vehicle at the time of the accident. Even during the trial, those documents have not been placed before the Court. Exhibit P9 is a disability certificate issued by a Dentist which discloses that the injured claimant has suffered 50% disability. As per the said disability certificate, 50% disability is attributable only based upon the Dental check up and it does not reflect 50% bodily disability of the claimant. The Tribunal has erroneously considered the said disability certificate as a permanent disability and has proceeded to pass an award.



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22. In view of the above said facts, the Tribunal has erroneously fixed negligence on the appellants, when the injured claimant himself is a tortfeasor who was under the influence of alcohol. The injured claimant was neither having a driving license nor an Insurance Policy for his two-wheeler. In those circumstances, the award of the Tribunal as against the appellants is unsustainable in law and therefore, it is set aside. The award made in the claim petition in MCOP.No.161 of 2016 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Pudukkottai is set aside. This Civil Miscellaneous Appeal is allowed. No costs.

29.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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1. The Motor Accident Claims Tribunal
Cum Chief Judicial Magistrate,
Pudukkottai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.



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Pre-delivery Judgement made in
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