



C.M.A(MD).No.805 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 11.04.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.805 of 2019

1.V.Vignesh

2.Veerapandian

... Appellants

vs.

S.Mariappan

....Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1998, to set aside the decree and judgement passed in MCOP.No.152 of 2018 dated 22.02.2019 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Virudhunagar, Srivilliputhur.

For Appellants : Mr.M.Ashok Kumar

For Respondent : No appearance

JUDGMENT

The present appeal has been filed by the first respondent in MCOP.No.152 of 2018 on the file of the Motor Accident Claims



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Tribunal, Virudhunagar challenging the liability fixed by the Tribunal.

2. According to the injured claimant he was travelling in a two wheeler along with his aunt at about 7.30 p.m on 18.06.2015. At that point of time, the two wheeler belonging to the second respondent was driven by the first respondent in a rash and negligent manner. When he attempted to cross the road, hit the two wheeler in which the injured claimant was travelled. In the said accident, the claimant sustained scratches all over the body and fracture in the left femur.

3. According to the claimant, he has completed his diploma and he is working as a mechanic and earning a sum of Rs.12,000/- per month. The claimant claimed a sum of Rs.7,00,000/- towards compensation for the injuries sustained by him.

4. The vehicle belonging to the second respondent was not insured and hence, the owner of the vehicle had filed a counter and contending that only the injured claimant had driven the vehicle in a rash and negligent manner and dashed against the first respondent's vehicle. Even though a complaint was lodged by the first respondent, the police officials have not registered a case as against the claimant. However, the



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police officials had registered a case on the basis of the complaint lodged by the injured claimant and in the said complaint, a charge sheet was filed against him and he had paid fine. However, he is not responsible for the said accident.

5.The Tribunal after considering the oral and documentary evidence, arrived at a conclusion that the accident has taken place only due to the rash and negligent driving on the part of the respondent in the claim petition. The said findings was arrived at merely based upon the F.I.R and the charge sheet that was filed as against the first respondent. The Tribunal had further found that the respondents have not raised a plea that the accident has taken place due to the negligence of the injured claimant. The Tribunal had refused to consider the plea of contributory negligence and proceeded to fix the compensation at Rs.3,37,200/- . This award is under challenge in the present appeal.

6.Though the injured claimant was served in the appeal, he has not chosen to appear either in person or through counsel.

7.The learned counsel for the appellants had contended that during the cross examination, PW1 /injured claimant has categorically admitted



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that the first respondent was standing and talking to his friend at the time of accident. Therefore, it is clear that the vehicle belonging to the second respondent and driven by the first respondent was stationery at the time of the accident. Only the injured claimant came in a rash and negligent manner and dashed against the standing vehicle. The learned counsel had further contended that the claimant has not examined any independent witness to establish his case of negligence on the part of the respondent. He had further contended that the trial Court has solely relied upon the F.I.R and the charge sheet and arrived at a finding that the accident has happened only due to the negligent on the part of the respondent. When evidence is let in before the Tribunal, the Tribunal has to consider the evidence let in before the Court and ought not to rely upon the F.I.R and the charge sheet to arrive at a finding relating to the negligence. Hence, he prayed that the award passed by the Tribunal may be set aside.

8.I have considered the submissions made on the side of the appellants and perused the materials available on record.

9.In the claim petition, the claimant has specifically contended that the vehicle belonging to the second respondent and driven by the first



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respondent attempted to cross the road and dashed against the vehicle which was driven by him. The second respondent had filed a counter contending that only the injured claimant had driven the vehicle in a rash and negligent manner and caused the said accident.

10.The motor vehicle inspector report relating to the vehicle of the injured claimant has been marked as Exhibit P3. A perusal of the said report, in Column No.12 indicates that the head light has been damaged. However, a perusal of the motor vehicle inspector report relating to the vehicle of the respondent which is marked as Exhibit P4 reflects that serious damage has been caused to the vehicle. The injured claimant had examined himself as PW1 in his cross examination and he has categorically admitted that at the time of accident, the first respondent Vignesh was standing near kerosene godown and he was talking to his friends. Therefore, it is clear that the vehicle of the respondent was stationery at the time of the accident.

11.A combined reading of the motor vehicle report marked as Exhibits P3 and P4 and deposition of PW1 will clearly indicate that the vehicle of the first respondent was on the corner of the road and he was



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talking to his friend when the accident has taken place.

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12.The Trial Court had relied upon the F.I.R and the charge sheet which have been marked as Exhibits P1 and P5 to arrive at a conclusion that the accident has happened only due to the rash and negligent driving of the vehicle belonging to the respondent. It is settled position of law that when evidence that is let in before the Tribunal in contradistinction to the Criminal Court proceedings, the Tribunal should rely upon only the evidence let in before the Court. In the present case, instead of relying upon the evidence let in before the Tribunal, especially the admission of PW1, the Tribunal had proceeded to rely upon the F.I.R and the charge sheet and had arrived at an erroneous finding that the accident had happened only due to the rash and negligent driving of the respondent.

13.Considering the fact that the accident has taken place in view of the negligence on the part of the injured claimant, the Tribunal ought to have fixed the contributory negligence on the part of the injured claimant also. Therefore, this Court is of the opinion that 50% of the contributory negligence can be fixed on the part of injured claimant.



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14.In view of the above said facts, the award of the Tribunal namely Rs.3,37,200/- is hereby modified to Rs.1,68,600/-. The respondents in the claim petition are directed to pay the modified sum of Rs.1,68,600/- along with interest at the rate of 7.5% p.a from the date of claim petition. This civil miscellaneous appeal is partly allowed to the extent as stated above. No costs.

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Index : Yes/No
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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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