



CMA(MD).No.609 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2023

PRONOUNCED ON : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.609 of 2019

K.Dhakshinamoorthy

....Appellant

VS.

1.C.Prakash

2.M.Pandiarajan

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1998, to set aside the fair and decretal order dated 04.04.2018 passed in MCOP.No.468 of 2014 on the file of the Motor Accident Claims Tribunal, Madurai (Special Subordinate Court, Madurai) by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.C.M.Arumugam

For R1 : Mr.K.Kumaravel

R2 : Died



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JUDGMENT

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The present appeal has been filed by the second respondent in MCOP.No.468 of 2014 on the file of the Motor Accident Claims Tribunal, Madurai challenging the liability and quantum.

2.According to the injured claimant, he was riding a two wheeler on 09.09.2010 in Madurai-Theni Road, at about 9.15 p.m, an Ambassador Car driven by the first respondent and owned by the second respondent came from the opposite direction in a rash and negligent manner and dashed against the two wheeler. In the said accident, he had suffered grievous injuries and he was hospitalized for 27 days.

3.According to the claimant, he had sustained fracture in the right leg, femur bone, fracture and dislocation of right hip, right hip bone and fracture of right foot. The said fractures have restricted his movement and he is not able to sit, squat or work. It is his further contention that he has been inserted with a steel plate in the hip region at the time of surgery and the same has not yet been removed. The petitioner has claimed a compensation of Rs.12,00,000/-.

4.Admittedly, the Ambassador Car was not insured and the owner namely the second respondent had filed a counter contending that he has



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sold the vehicle to one P.C.Sam Massilamani on 16.03.2009 itself and thereafter, the accident having taken place on 09.09.2010. He is not responsible for payment of any compensation. The claim petition is not maintainable for non-impleading the said P.C.Sam Massilamani.

5.The Tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has taken place due to the rash and negligent driving on the part of the first respondent. The Tribunal further found that on the date of the accident, the registration certificate of the vehicle was standing only in the name of the second respondent and proceeded to mulct the liability upon the second respondent.

6.The Tribunal further found that the injured claimant was earning a sum of Rs.18,000/- per month and he had sustained 50% partial permanent disablement as per medical board certificate. The Tribunal applied the multiplier method and awarded a sum of Rs.7,34,400/- towards loss of income, Rs.30,000/- towards pain and suffering, Rs. 1,000/- towards damages to clothes, Rs.2,000/- towards transport expenses and a sum of Rs.9,71,000/- was awarded under the head of medical expenses. Challenging the said award, the second respondent in



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the claim petition has filed the present appeal.

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7. According to the learned counsel for the appellant, he had sold the offending vehicle to one P.C.Sam Massilamani on 16.03.2009 and he had also filed a delivery receipt as Exhibit R1. Therefore, the Tribunal had committed an error in fixing the liability upon him when he was not the owner of the vehicle on the date of the accident. He had further contended that the claimant had filed I.A.No.1207 of 2015 to implead the said P.C.Sam Massilamani, but later he had not pressed the said application. He had further stated that when the first respondent's driver was not his employee, for the alleged negligence on the part of the first respondent, the second respondent cannot be held vicariously liable. He had further contended that the Tribunal has erroneously appreciated Exhibits P3 and P4 and arrived at a finding that the injured claimant was earning a sum of Rs.18,000/-. Hence, he prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the claimant had contended that the offending vehicle was not insured on the date of the accident. The second respondent is the registered owner of the vehicle on the date of the accident. Therefore, he alone is liable to pay compensation. He had further contended that the injured claimant was



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employed in a private company and his appointment order indicates that his initial salary was Rs.13,000/- and he was promoted and his salary was refixed at Rs.18,000/- in December 2009. He had produced the appointment order and the promotional order to indicate the salary. Therefore, the Tribunal cannot be found fault with for relying upon these documents to arrive at a conclusion that the claimant was earning a sum of Rs.18,000/- on the date of the accident. Hence, he prayed for confirming the award passed by the Tribunal.

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

10.The primary contention on the part of the appellant is that he was not the owner of the vehicle on the date of the accident. According to him, he had sold the vehicle on 16.03.2009 to one P.C.Sam Massilamani and the accident has taken place on 09.09.2010. According to the appellant, the said P.C.Sam Massilamani has taken possession of the vehicle by executing a delivery note under Exhibit R1.



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11. In view of the judgement of the Hon'ble Supreme Court only the registered owner can be held liable until the registration certificate is transferred in the name of the purchaser. In the present case, the second respondent has neither chosen to implead his purchaser nor chosen to issue notice to him calling upon him to explain the accident. Though the appellant had denied that the first respondent is not his driver, he has not chosen to prove that the first respondent is the driver of the said P.C.Sam Massilamani. Therefore, this Court is of the considered opinion that the Tribunal was right in arriving at a finding that the appellant alone was the owner of the vehicle on the date of the accident.

12. The injured claimant was working as a Business Development Manager in a private company and his appointment order is marked as Exhibit P3 indicates that his initial salary was fixed at Rs.13,000/- per month. Exhibit P4 indicates that he has been promoted and a salary of Rs.18,000/- per month was fixed in December 2009. There is no reason to doubt to these two documents. No contra evidence has been produced on the side of the appellant to establish that Exhibits P3 and P4 are not acceptable in evidence. Therefore, this Court does not find any reason to interfere in the quantum of award passed by the Tribunal.



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WEB COPY 13.This Civil Miscellaneous Appeal lacks merits and the same stands dismissed. No costs.

27.06.2023

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

1. The Motor Accident Claims Tribunal,
Special District Court, Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.609 of 2019

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