



CMA No.412 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.412 of 2022
and CMP No.2860 of 2022

S.G.Balaji

.. Appellant/2nd Respondent

.Vs.

1.D.Dinesh

..Respondent/Petitioner

2.L.Krishnamoorthy

..Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to allow this appeal and be pleased to set aside the award in M.C.O.P.No.21 of 2019 dated 6.8.2021 on the file of Motor Accident Claims Tribunal (Special Subordinate Judge, Special Sub Court II), Tiruvallur.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : No appearance



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JUDGMENT

This civil miscellaneous appeal has been filed by the owner of the vehicle questioning the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Special Sub Court No.II, Tiruvallur in MCOP No.21 of 2019, dated 06.08.2021.

2.The case of the 1st respondent/claimant is that on 1.1.2018 at about 10.00 pm., he was riding a motorcycle which was proceeding from Villapakkam to Karikalawakkam Road along with the pillion rider. When the vehicle approached a junction road, the tractor which was driven by the 1st respondent and which is owned by the 2nd respondent came in a rash and negligent manner and hit the motorcycle of the claimant. As a result, the claimant sustained grievous injuries. The accident was also reported to Vengal Police Station and the case was registered in Crime No.2 of 2018. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the tractor by the 1st respondent. Having rendered such finding, the Tribunal proceeded further to fix a compensation under various heads and the total compensation was fixed at Rs.4,92,000/- in the following manner:



Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	For Loss of Income (Rs.7,000/- x 11 months)	77,000/-
2.	For Physical Disability (52% x 5,000 @ 1% @ Rs,5000)	2,60,000/-
3.	Medical Expenses	5,000/-
4.	Transport Expenses	2,000/-
5.	Extra Nourishment	12,000/-
6.	Damage to Clothing and Articles	1,000/-
7.	Pain and Sufferings	80,000/-
8.	Attender Charges	5,000/-
9.	Loss of happiness and amenities	50,000/-
	Total	4,92,000/-

4.The above compensation amount was directed to be paid by the 1st and 2nd respondents in the claim petition along with interest at the rate of 7.5.% p.a. Since the tractor was not covered by any insurance, the liability was mulcted on the driver and the owner of the vehicle. The owner of the vehicle has preferred the present appeal aggrieved by the award passed by the Tribunal.

5.Heard Mr.K.Varadha Kamaraj, learned counsel for the appellant. The respondents have been served with notice and sufficient opportunity was also given to them and they did not chose to appear before the Court either in person or through counsel. Therefore, this Court decided to proceed ex-parte by order dated 21.11.2023.



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6.The learned counsel for the appellant submitted that as per the FIR that was registered based on the complaint that was given by the father of the injured, it was stated that the motorcycle was hit by an unknown vehicle. Basically, it was contended that it was a hit-and-run case. While so, there is no evidence to establish as to how the claimant had zeroed in that it is only the tractor belonging to the appellant that is involved in this case.

7.It is also brought to the notice of this Court that the investigation officer had fixed the liability on the 2nd respondent herein as if he had driven the tractor. However, this version given by the investigation officer was disbelieved by the criminal Court and to substantiate the same, the learned counsel for the appellant relied upon Ex.R.3 which is the judgment passed in C.C.No.2/2018, by the trial Court dated 3.8.2018.

8.The crux of the issue involved in this appeal is regarding the involvement of the tractor belonging to the appellant in the accident. The testimony of PW.1 and PW.2 does not really help the case of the claimant. In fact, PW.1 had deposed that he was unconscious for close to 20 days. Therefore, the only other testimony that requires the consideration of this Court is that of PW.3, who claims to be the eye witness in this case and who is said to have taken the injured to the hospital.



9.The accident register that was furnished before this Court does not mention the name PW.3. Therefore, if really PW.3 had taken the injured to the hospital, there is no reason as to why his name is not found in the accident register. Hence, the very presence of PW.3 in the accident spot is highly doubtful. On going through the accident register, it is seen that the injured was brought by a 108 ambulance and it was found that the injured and the pillion rider consumed alcohol at the relevant point of time. This doubt further enhances since PW.3 was not examined as a witness in the criminal case. The eye witnesses who were examined in the criminal case also did not support the case of the prosecution.

10.It is true that the judgment of the criminal Court will not bind the Tribunal. However, considering the fact that the offending vehicle has not been properly identified and the driver who drove the vehicle was also not properly identified, fixing the negligence as against the owner of the vehicle becomes highly improbable.

11.The Tribunal has come to a conclusion that if really a false case was given and the vehicle of the appellant is not involved, the appellant would have taken steps to proceed for false implication in the case. This finding of the Tribunal is merely based on assumption and surmises.



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12. On an overall consideration of evidence available on record, it is seen that the offending vehicle has not been properly identified in this case. Hence, it will not be appropriate to fix the liability on the appellant who is the owner of the tractor.

13. The Tribunal has fixed the liability on mere assumptions and surmises and therefore, the direction was given to the appellant to pay the compensation to the injured. The said finding of the Tribunal is liable to be interfered by this Court. If the negligence on the part of the appellant and the driver of the vehicle has not been established, there is no question of directing the appellant to pay the compensation.

14. In the light of the above discussion, the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Special Sub Court No.II, Tiruvallur in MCOP No.21 of 2019, dated 06.08.2021, is hereby set aside and this civil miscellaneous appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP



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To

Motor Accident Claims Tribunal
(Special Subordinate Judge, Special Sub Court II)
Tiruvallur.

Copy to:-

The Section Officer
VR Section, High Court,
Chennai.



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N. ANAND VENKATESH., J
KP

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