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C.M.A.No.1991 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2023

PRONOUNCED ON : 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.1991 of 2018 and
C.M.P.Nos.15474 of 2018 & 2298 of 2019

P.C.A.Abusand

...Appellant

Vs.

B.Ramkumar

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 15.11.2017 in M.C.O.P.No.2717 of 2011 made by the learned Motor Accidents Claims Tribunal, VI Judge, VI Court of Small Causes, Chennai.

For Appellant : Mr.G.Balasubramanian

For Respondent : Mr.P.Kavundarayan

Legal Aid Counsel– No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, who is the owner of the offending vehicle questioning the liability and challenging the compensation awarded in M.C.O.P.No.2717 of 2011 dated 15.11.2017, by the learned Motor Accident Claims Tribunal, VI Judge, VI Court of Small Causes, Chennai.

2 The appellant is respondent and respondent is claimant before the claims Tribunal. The respondent/claimant filed a claim petition seeking compensation of Rs.3,00,000/- for the injuries sustained by him in the accident that occurred on 26.12.2010.

3 The claim petition was contested by the appellant/respondent by filing detailed counter denying the accident and liability. On the side of the respondent/claimant P.Ws.1 & 2 were examined and Exs.P1 to 11 were marked. On the side of the appellant/respondent, no oral and documentary evidence was let in.



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4 The learned Tribunal, on an assessment of entire oral and documentary evidence on record, fixed liability on the appellant/respondent and awarded a sum of Rs.1,65,288/- and directed the appellant to pay 50% of the compensation by fixing contributory negligence. Aggrieved over the findings of the Tribunal, questioning the liability and challenging the Award, the respondent in the claim petition is before this Court with the present civil miscellaneous appeal.

5 According to learned counsel for the appellant/respondent, the Tribunal erred in fixing the liability on the appellant/respondent. It is not proved that the accident had occurred only due to the rash and negligence of the respondent. Even though the Tribunal made a finding that the respondent/claimant did not produce driving license, but erroneously fixed contributory negligence on the appellant as well as the respondent/claimant. The respondent/claimant did not whisper the details of the insurance for his vehicle and the Tribunal went in wrong in fixing the contributory negligence, which is unwarranted, since there is no driving license produced by the respondent/claimant.



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5.1 The learned counsel for the appellant/respondent would further submit that Ex.P1 is only copy of the FIR, which was not properly stamped by the authority concerned. The Tribunal erred in relying on the Ex.P1 and foisted the liability on the appellant/respondent, which is erroneous. The Tribunal went in wrong in fixing the liability on the appellant, in the absence of any documentary or oral evidence to establish the negligence on the part of the appellant beyond the reasonable doubt in respect of the alleged accident held on 26.12.2010. Therefore the findings and Award of the Tribunal is liable to be set aside.

6 None appeared on behalf of the respondent/claimant. Heard the learned counsel for the appellant/respondent and perused the materials available on record.

7 The case of the respondent/claimant before the Tribunal is that on 26.12.2010 at about 22.00 hours, when the claimant was riding his motorcycle, bearing Reg.No.TN 07 BJ 6624 on the junction of Loyds Road



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and Kamaraj Salai from North to South direction, the rider of the motorcycle bearing Reg.No.TN 01 K 0418 rode by the appellant/respondent from South to North direction in a rash and negligent manner and dashed on the respondent/claimant's motorcycle, due to which, the claimant fell down and sustained grievous injuries and therefore he filed claim petition against the appellant/respondent, who is the rider and owner of the offending vehicle at the time of accident.

8 It is the contention of the respondent that the claimant did not produce his driving license and he is the cause for accident and the Tribunal relying on Ex.P1 FIR foisted the liability on the appellant/respondent, which is erroneous.

9 A careful perusal of the records shows that Ex.P1 is the FIR in Crime No.466/T3/2010 against the appellant/respondent for the offence under Section 338 IPC and 184 of Motor Vehicles Act. Even though R.W.1 brother of the appellant/respondent was examined, who stated that the appellant has not ridden the offending vehicle at the time of accident, Ex.P1



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FIR was registered against the appellant/respondent only.

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10 Further it is the main contention of the appellant/respondent that Ex.P1 FIR is only photo copy and relying on the same, the Tribunal erroneously foisted liability on the appellant/respondent. But, to disprove the contents of FIR and to prove the stand of the appellant/respondent, neither he came into witness box nor examined any other witness. Hence evidence of P.W.1 and contents of Ex.P1 FIR remain unchallenged.

11 As far as the contention of the appellant that the claimant did not produce his driving license and he is cause for the accident, is concerned, the Tribunal appreciated all the oral and documentary evidence and since the claimant did not produce his driving license, fixed contributory negligence on both the appellant and the claimant and directed the appellant to pay 50% of the award amount. Therefore this Court does not find any perversity in the finding of the Tribunal with regard to the liability.

12 Coming to the quantum of compensation, the Tribunal



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considering the disability suffered by the claimant, period of treatment undergone and avocation of the claimant, awarded Rs.1,65,288/- as compensation and since both the vehicles were not insured with any Insurance Company, directed the appellant/respondent, who is the owner of the offending vehicle to pay 50% of the compensation by fixing contributory negligence. This Court does not find any perversity in the findings of the Tribunal as well as the Award and there is no reason to the interfere with the same.

13 For the foregoing observations and reasons, this civil miscellaneous appeal is dismissed. Connected miscellaneous petitions are closed. No costs.

14 The appellant/respondent is directed to deposit the award amount along with interest @ 7.5 within a period of six weeks from the date of receipt of a copy of this order and on receipt of the same, the Tribunal is directed to pay the same directly to the account of the claimant as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561*



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*(The Divisional Manager, The Oriental Insurance Company Limited,
Kannur, Vs. Rajesh and Others).*

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal,
VI Judge, VI Court of Small Causes, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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Pre-Delivery Judgment
in
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