



C.M.A(MD)No.1435 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 09.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.1435 of 2013

and

M.P(MD)Nos.1 of 2013 & 1 of 2015

Srinivasan

... Appellant/1st Respondent

Vs.

1.Backianathan

... 1st Respondent/Petitioner

2.S.Sivamariappan

3.K.Muthuvel

... Respondents 2 & 3/Respondents 2 & 3

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1998, against the award passed in M.C.O.P.No.361 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli, dated 19.11.2012.

For Appellant : Mr.M.P.Senthil

For R-1 : Mr.T.Selvakumaran

For R-2 : No appearance

For R-3 : Mr.V.Sasi Kumar



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JUDGMENT

The present Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.361 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli, wherein the first respondent herein filed a petition for compensation as against the appellant and respondents 2 and 3 herein.

2. The Tribunal has passed an award directing the appellant herein to pay a sum of Rs.1,74,027/- with interest at the rate of 9% per annum from the date of petition till the date of realisation amount and also after payment made to the claimants, the same can be recovered from the third respondent herein. As against the order passed by the Tribunal, the first respondent has filed the present Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.



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4. The brief facts of the petition averments are as follows:

On 22.07.2008, the petitioner while riding a two wheeler bearing Registration No.TN 09 S 1504 as pillion rider near Palayamkottai Market, the first respondent vehicle bearing Registration No.TN 69 B 7952 came in a rash and negligent manner and dashed against the two wheeler. Thereby the petitioner sustained injury. The accident took place due to the negligence of the first respondent vehicle driver, thereby filed this appeal for claiming compensation of Rs.5,00,000/-.

5. The first respondent had filed a counter stating that the first respondent sold the said vehicle bearing Registration No.TN 69 B 7952 to the second respondent on 09.05.2007 itself. Therefore, on the date of accident, the first respondent is not the owner of the vehicle. Further the accident took place only due to the rash and negligence on the part of the rider of the two wheeler. Hence, the petition is liable to be dismissed.

6. The second respondent had filed a counter stating that the respondents denied the averments made in the petition and he also denied the age, occupation, income and the injuries sustained by the petitioner.



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The vehicle bearing Registration No.TN 69 B 7952 originally belonged to the owner of the first respondent and the second respondent purchased the vehicle and thereafter, sold to one Muthuvijayan, Thoothukudi on 30.05.2007. The sale of the vehicle to the said Muthuvijayan is also known to the first respondent. Therefore, this respondent is noway responsible for the claim of the petitioners.

7. The third respondent had filed a counter stating that the petition averments are denied as false. At the time of accident, the vehicle was driven by the driver in a slow speed and the accident was took place only due to the negligence on the part of the rider of the two wheeler. Since the accident not took place due to the negligence on the part of the driver of the jeep, the third respondent is noway liable to pay compensation to the petitioner. Hence, the petition is liable to be dismissed.

8. In order to prove the case of the petitioner, the petitioner had examined P.W 1 and P.W 2 and marked as Exhibits P.1 to P.12 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked as Exhibits R.1 to R.3.



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9. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has passed an award as against the first respondent to pay a sum of Rs.1,74,027/- and thereafter, the first respondent recover the same from the second respondent.

10. Being aggrieved by the above said order, the present Civil Miscellaneous Appeal filed by the first respondent owner of the vehicle on various grounds.

11. The learned Counsel appearing for the appellant would contend that the appellant was the previous owner of the vehicle bearing registration No. TN 69 B 7952 and he had sold the vehicle to the second respondent on 09.05.2007. In turn, the second respondent had sold the vehicle to the third respondent on 30.05.2007. But the Tribunal has fastened a liability as against the appellant / first respondent without considering that the said vehicle was sold to the second respondent much



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earlier to the date of accident and in-turn the second respondent had sold the vehicle to the third respondent. Therefore, the order passed by the Tribunal as against the first respondent is liable to be set aside. Further the Tribunal has awarded the excess amount when the petitioner was only sustained a simple injury and no any permanent disability to the petitioner. But however, the award passed by the Tribunal is too high.

12. The learned Counsel appearing for the first respondent / claimant would contend that the accident took place due to the rash and negligence driving of the jeep driver and the same has not been denied by the appellant and the appellant only filed an appeal as against the liability. Though the first respondent / appellant has sold the property to the second respondent on the date of accident, the name transfer was not effected either in the second respondent or the third respondent. Therefore, on the date of accident, the first respondent is the owner of the vehicle, since the RC book was in the name of the first respondent. Therefore, the Tribunal after taking into consideration of the injuries sustained by the petitioner, awarded a sum of Rs.1,74,027/- as against the first respondent and the first respondent after satisfying the amount can recover the same from the



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second respondent. Therefore, the order passed by the Tribunal is in order and this appeal is liable to be dismissed.

13. The learned Counsel appearing for the third respondent / third respondent would contend that the accident took place only due to the negligence on the part of the rider of the two wheeler and this petitioner on the date of accident drove the vehicle in a slow speed and cautious manner in spite of that the rider of the driver dashed against the jeep and invited the accident. Already the Tribunal has dismissed the petition as against the third respondent since he is the only driver of the vehicle.

14. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appeal is liable to be allowed or not?

15. In this case, the first respondent herein being injured filed a claim petition as against the appellant and respondents 2 and 3 herein for compensation. The Tribunal after analyzing the evidence adduced in both



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the sides awarded a sum of Rs.1,74,027/- by directing the first respondent to pay the award amount with interest at the rate of 9% per annum from the date of petition till the date of realisation and thereafter, recover the same from the second respondent herein. According to the appellant, already he had sold the vehicle which involved in the accident to the second respondent herein (i.e.,) on 09.05.2007. The second respondent also admitted the purchase of the vehicle from the appellant. In-turn he sold the vehicle to the third respondent. On the date of accident, the third respondent is the owner of the vehicle and the first respondent is not the owner of the vehicle. However, the appellant admitted that on the date of accident, the registration certificate was not transferred either in the name of the second respondent or in the name of the third respondent. On the date of accident, the name transfer was not effected and the registration certificate was stood in the name of the appellant. It is a well settled law that unless the name transfer was effected in the registration certificate, the first respondent has to be treated as owner of vehicle and thereby, the Tribunal after taking into consideration of all the aspects correctly fasten the liability as against the first respondent and thereby, this Court has no warrant to interfere with the order of the Tribunal. As far as the quantum is



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concerned, the Tribunal has awarded a sum of Rs.2,000/- for 1% of disability and also awarded fair compensation and on other hands, the award amount awarded by the Tribunal is fair and reasonable. Hence, this Court has no warrant to interfere with the order of the Tribunal.

16. In view of the above said discussions, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Already the appellant has only deposited Rs.25,000/-. The appellant / first respondent is directed to deposit the entire award amount within a period of two (2) months from the date of this order after deducting the award amount already deposited by him as ordered by the Tribunal. Accordingly, this Civil Miscellaneous Appeals stands dismissed and the impugned award, dated 19.11.2012 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

09.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

1. Motor Accident Claims Tribunal
(Principal Sub Judge),
Tirunelveli.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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