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C.M.A.(MD)No.1685 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1685 of 2013

1.The Assistant Execution Engineer,
Agricultural Engineering,
Salem.

2.The District Collector,
Salem.

... Appellants

Vs.

1.Senthilkumar
2.Srinivasan

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal cum Subordinate Judge, Tenkasi in M.C.O.P.No.59 of 2009 dated 20.10.2010.

For Appellants : Mr.N.Muthuvijayan

For Respondent No.1 : Mr.S.Murugan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.59 of 2009 on the file of Motor Accident



vehicle was proceeding slowly after crossing the railway track, at that time the petitioner attempted to overtake the vehicle and fell down thereby he himself invited the accident and sustained injuries. Therefore, the petition is liable to be dismissed.

4.In order to prove the case of the petitioner before the Tribunal, he examined P.W.1 and P.W.2 and marked Exs.P.1 to P.13. On the side of the respondents, neither any witnesses were examined nor any documents were marked.

5.After hearing both sides and perusing the oral and documentary evidences adduced on either side, the Tribunal had partly allowed the claim petition and awarded a sum of Rs.1,09,000/- towards compensation by directing the third respondent therein to pay the said amount to the claimant in M.C.O.P.No.59 of 2009, with interest at the rate of 7.5% from the date of the claim petition till the date of realisation. As against the order passed by the Tribunal, the present appeal has been preferred by the respondents 2 and 3 on various grounds, disputing the liability.

6.Learned Counsel for the appellant would contend that the accident did not take place due to the negligence on the part of the 1st respondent and the same occurred due to the negligence of the petitioner. On the date of the accident, the first respondent vehicle



after crossing the railway crossing was proceeding slowly, at that time the petitioner proceeded in two wheeler in a rash and negligent manner and dashed against the vehicle and thereby he himself invited the accident due to his negligence. Therefore, the first respondent is no way liable for the accident. But the Tribunal failed to consider the above said aspects and erroneously awarded a compensation fixing the liability on the appellants / respondents.

7. There is no representation on the side of the respondents.

8. This Court after hearing the learned Counsel for the appellants and upon perusing the documents including the order of the Tribunal, frames the point for determination in this appeal as follows:

“Whether this appeal has to be allowed or not?”

9. In this case, according to the appellants, the accident did not happen due to the negligence on the part of the driver / second respondent. When the second respondent vehicle was proceeding slowly, the claim petitioner attempted to overtake the vehicle. At that time, due to his over speed he dashed against the vehicle and sustained injuries. Therefore, there is no negligence on the part of the driver of the first respondent.



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10.Per contra, the petitioner's contention in the claim petition is that the accident took place when the driver of the first respondent drove the vehicle in a narrow road in a rash and negligent manner and thereby the accident took place. In order to prove the same, on the side of the petitioner, he examined P.W.1 and P.W.2 and they deposed about the negligence on the part of the driver of the first respondent. But the respondents 2 and 3 have failed to adduce contra evidence to rebut the contention of the petitioner. Therefore, in the absence of any contra evidence, the contention of the respondents is not acceptable and the evidence of petitioner side was accepted. The Tribunal also after considering the same, fairly came to the conclusion that the accident took place due to the negligence on the part of the appellants / respondents.

11.The Tribunal after taking into consideration the injuries sustained by the petitioner / first respondent, awarded a just and fair sum of Rs.1,09,000/- as compensation. Therefore, the order passed by the Tribunal is in order in all aspects and there is no infirmity or perversity and warrants no interference. Hence, the same is confirmed.

12.In the result, this Civil Miscellaneous Appeal is dismissed, confirming the order passed by the Tribunal in M.C.O.P.No.59 of



C.M.A.(MD)No.1685 of 2013

2009 dated 20.10.2010. The appellants / respondents are directed to deposit the amount awarded by the Tribunal within a period of two [2] months from the date of receipt of a copy of this order. There shall be no order as to costs.

14.02.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

MR



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C.M.A.(MD)No.1685 of 2013

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1685 of 2013

P.DHANABAL, J.

MR

C.M.A.(MD)No.1685 of 2013

14.02.2024