



C.M.A. (MD) No. 503 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 12.01.2024

CORAM:

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

C.M.A.(MD)No.503 of 2013

P.Alagarraj

..Appellant/Petitioner

.VS.

1. S.Ramaraj
2. The New India Assurance Company Ltd
through its General Manager
No.77/78, South Car Street,
First Floor, Sivakasi- 626 123
3. Union of India
Rep. by its General Manager
Southern Railway
Chennai

.. Respondents/ Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow this appeal and enhance the award amount in M.C.O.P.No. 215 of 2000 on the file of the Motor Accident Claims Tribunal/Sub Court, Srivilliputhur, dated 12.01.2012.

For Appellants	: Mr.T.Selvakumaran
For R1	: Mr.M.P.Senthil
For R2	: Mr.R.Sundar Srinivasan
For R3	: Mr.P.Subbiah (CG Senior Panel Counsel)



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No. 215 of 2000 on the file of the Motor Accident Claims Tribunal/Sub Court, Srivilliputhur, dated 12.01.2012, wherein the appellant herein has filed a petition before the Tribunal seeking compensation of Rs.3,00,000/- to the injuries sustained by him in the accident.

2. The Tribunal has dismissed the application. As against the order passed by the Tribunal the present appeal has been filed by the petitioner..

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

4. The brief facts of the petition averments are as follows: The petitioner was a loadman of the first respondent tractor and trailer bearing Reg. No.TN 67 Y 0137 and TN 67 Y 0542 respectively. Whiles, on 08.11.1999 when the tractor was proceeding to pick up export load at about 8.30 a.m., while crossing level crossing near Appanaickanpatti a train came an hour late and without giving any whistle any proper warning dashed against the tractor. The petitioner seated near the driver seat was thrown out and sustained severe



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injuries and he permanently disabled and thereby he filed this petition claiming compensation

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5. The brief averments in the counter filed by the second respondent are as follows : The first respondent vehicle was insured with the second respondent on the date of accident but the manner of accident is suppressed. The tractor was driven by the petitioner himself and the railway police have registered First Information Report as against this petitioner and he did not have any valid license to drive the tractor. The accident took place only due to the negligence on the part of the driver of the tractor, i.e., the petitioner. The charge sheet was filed against one Vijayakumar, through influence and collusion between the owner of the vehicle and the alleged driver, hence the petition is liable to be dismissed.

6. The brief averments in the counter filed by the third respondent are as follows: As per Motor Vehicles Act it is the duty of the approaching vehicle to stop the vehicle at level crossing and proceed safely. It is unmanned level crossing and the driver of the tractor did not observe the traffic rules and had driven the tractor rashly and negligently and caused accident. The accident occurred due to the rash and negligence on the part of the driver of the tractor, therefore the petition is liable to be dismissed.



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7. Before the Tribunal, in order to prove the case of the petitioner they have examined P.W.1 to P.W.3 and marked exhibits Exs.P.1 to P.8. On the side of the respondent, R.W.1 was examined and Ex.R.1 was marked. After hearing both sides and perusing the documents available on record, the Tribunal has dismissed the petition. As against the dismissal order passed by the Tribunal the petitioner has preferred this appeal on various grounds

8. The learned counsel appearing for the appellant would contend that the accident took place due to the rash and negligence on the part of the driver of the train as the train not scheduled in time and it came one hour late. When the tractor driver crossed the level crossing the driver of the train without applying brake dashed against the tractor. Further the petitioner has produced Ex.P.1, certified copy of the charge sheet and Ex.P.2, certified copy of judgment in STC No.328 of 2000 on the file of the learned Judicial Magistrate No.I, Virudhunagar. As per the charge sheet, judgment passed in STC No.328 of 2000, the vehicle was driven by one Vijayakumar but the Tribunal failed to consider the same and dismissed the application in entirety. Therefore the order passed by the Tribunal is liable to be set aside.



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9. The learned counsel appearing for the third respondent would contend that the accident occurred due to negligence on the part of the driver of the tractor. As per Motor Vehicle Act, while crossing the railway level crossing the driver of the vehicle has to verify and ensure that no train is coming in the railway track and then they can cross the level crossing but without noticing the train negligently driven the tractor and dashed against the train. Therefore the railway department is not responsible for the accident, therefore the petition filed against the railway department is liable to be dismissed.

10. The learned counsel appearing for the second respondent would contend that the tractor was insured with the second respondent on the date of accident but the said tractor was driven by the petitioner himself and the First Information Report was registered as against the petitioner. The First Information Report has been marked as Ex.R.1. The petitioner has not filed the certified copy of the First Information Report. They are suppressing the fact and the petitioner also sustained injuries in the so called accident. More over the order passed by the Tribunal was already challenged through appeal and this Court has set aside the order of the Tribunal and remanded back the matter to the Tribunal to examine the driver of the tractor vehicle. Thereafter



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the driver of the tractor was examined as P.W.3 and he denied the driving of the vehicle on the date of accident and also he denied that he did not go to any Court and did not pay any fine amount before the Court. Therefore he totally denied the driving of the first respondent vehicle on the date of accident. Therefore after considering all the aspects the Tribunal dismissed the application. Now the petitioner has preferred this appeal without any valid grounds, therefore the appeal is liable to be dismissed.

11. 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?

12. In this case according to the appellant, the accident took place due to the negligence on the part of the driver of the tractor in which the appellant was travelling near to the driver seat. The driver of the tractor without minding the train proceeded and crossed the level crossing, at that time the accident was occurred. The contention of the respondent is that the petitioner himself had driven the tractor and without minding on the coming train crossed the level crossing thereby dashed against the train and caused the accident. In order to prove the negligence on the part of the driver of the first respondent



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the petitioner has marked Ex.P.1 certified copy of charge sheet, Ex.P.2 certified copy of judgment passed by the learned Judicial Magistrate No.I, Virudhunagar in STC No.328 of 2000, Ex.P.3 certified copy of wound certificate, Ex.P.4 treatment particulars of the petitioner and also filed Ex.P.6 permanent disability certificate.

13. On careful perusal of the above documents, they revealed that the one Vijayakumar had driven the vehicle on the date of accident and he admitted his guilt and paid the fine amount before the learned Judicial Magistrate No.I, Virudhunagar. Per contra on the side of the respondent, they have examined R.W/1 Railway employee and he deposed that the petitioner only drove the vehicle, tractor on the date of accident and caused accident. As per the directions of this Court the so called driver one Vijayakumar was examined as P.W.3 and he totally denied the driving of the vehicle on the date of accident and he denied the penalty paid before the criminal court. Since the respondent questioned the involvement of the driver of the first respondent tractor it is the duty of the petitioner to prove that the tractor was driven by P.W.3/Vijayakumar on the date of accident. According to the petitioner he sustained injuries while he was sitting near the driver. While so the driver also would have sustained injuries on the date of accident but the said driver who was examined as P.W.3 did not state about the injuries sustained by him and



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particularly he denied the driving of the vehicle on the date of accident. Further the First Information Report was also registered as against the petitioner and the petitioner has suppressed the fact and not even disclosed about the registration of the First Information Report against him. Therefore the Tribunal after taking into consideration of all the aspects correctly dismissed the petition and this Court has no warrant to interfere with the order passed by the Tribunal and therefore this appeal has no merits and is liable to be dismissed.

14. Accordingly this Civil Miscellaneous appeal is dismissed.

12.01.2024

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

1. The Motor Accident Claims Tribunal/Sub Court, Srivilliputhur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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