



C.M.A. (MD) No. 161 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.02.2024

Pronounced on : 26.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.161 of 2018

R.Ramakrishnan

... Appellant/
Petitioner

Vs.

1. M.Irulandi
*(1st respondent remained ex parte before
the lower court)*
2. The Oriental Insurance Co. Ltd.,
represented through its Divisional Manager,
No.1, Opposite to Crime Branch,
106, T.P.K.Road, Madurai.
*(2nd respondent adopted 4th respondent before
the lower court)*
3. Sri Anandakrishnan & Company,
represented through its Partner Selva Murugan,
No.39/5, Saratha Shopping Complex,
Simmakkal, Madurai.
*(3rd respondent remained ex parte before
the lower court)*



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4. The Oriental Insurance Co. Ltd.,
represented through its Branch Manager,
CBOI, Saratha Shopping Complex,
Workshop Road,
Simmakkal, Madurai.

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order dated 06.11.2017 passed in M.C.O.P.No.1744 of 2008 by the learned Motor Accident Claims Tribunal cum IV Additional Sub Court, Madurai.

For Appellant	: Mr.K.Vijay Anand for S.Sitharthan
For R2 & R4	: Mr.C.Jawahar Ravindran

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.1744 of 2008 dated 06.11.2017 on the file of the Motor Accident Claims Tribunal/IV Additional Subordinate Court, Madurai, dismissing the claim petition.

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



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3. The case of the claimant is that on 24.06.2006 at about 22.00 hours on Madurai to Thirupparankundram main road opposite to Amirthanathamayi Mutt, when the claimant was proceeding from Madurai to Thirupparankundram in his motorcycle bearing Registration No.TN-59-S-7470 following the traffic rules, another two wheeler bearing Registration No.TN-59-R-5657, which came in the opposite direction in a rash and negligent manner, came to the wrong side of the road and dashed against the claimant's vehicle and as a result of which, the claimant had sustained grievous injuries and multiple fractures and that the accident was occurred only due to the rash and negligent riding of the rider of the two wheeler bearing Registration No.TN-59-R-5657.

4. The fourth respondent has filed a counter statement, which was adopted by the second respondent, wherein, they have taken a stand that the accident was occurred only due to the negligent driving of the claimant and he alone contributed his negligence to the accident and thereby voluntarily invited the peril, that the claimant was not possessing valid driving license to drive the two wheeler at the time of accident and that therefore, the fourth respondent is not liable for the claim.



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5. During trial, the claimant has examined himself as P.W.1 and 3 other witnesses as P.W.2 to P.W.4 and exhibited 20 documents as Ex.P.1 to Ex.P.20. The fourth respondent has examined its Assistant Manager Pandiarajan as R.W.1 and summoned and examined the Sub Inspector of Police, Thirupparankundram Police Station as R.W.2 and exhibited 3 documents as Ex.R.1 to Ex.R.3 and one witness document as Ex.X.1. The respondents 1 and 3 had remained *ex parte*.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 06.11.2017, by holding that the accident was occurred only due to the rash and negligent riding of the claimant, dismissed the claim petition. Aggrieved by the dismissal of the claim petition, the claimant has preferred the present appeal.

7. It is not in dispute that the two wheeler bearing Registration No.TN-59-S-7470, which was driven by the claimant, was owned by the third respondent and the same was insured with the fourth respondent. It is also not in dispute that the first respondent was the owner-cum-rider of the



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two wheeler bearing Registration No.TN-59-R-5657 at the time of accident and his vehicle was insured with the second respondent. Since the respondents 2 and 4 are one and same insurance company, the second respondent has adopted the counter filed by the fourth respondent.

8. It is also not in dispute that the first respondent, who had also sustained injury in the accident, has filed a claim petition in M.C.O.P.No. 19 of 2007 against the respondents 2 to 4 herein and the learned Principal Subordinate Judge, Madurai, has passed an award dated 14.09.2012 holding that the rider of the two wheeler bearing Registration No.TN-59-S-7470 (driven by the claimant herein) was responsible for the accident and that the said rider was not possessing valid driving license at the time of accident, directed the fourth respondent herein to pay the award amount to the first respondent herein (claimant in M.C.O.P.No.19 of 2007) and recover the same from the third respondent herein. Aggrieved by the award passed in M.C.O.P.No.19 of 2007, the second respondent herein has preferred an appeal in C.M.A.(MD)No.1039 of 2013 and this Court, vide judgment dated 22.06.2016, dismissed the appeal and thereby confirmed the award passed by the Tribunal.



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9. It is pertinent to note that the accident and the involvement of the 2 two wheelers are not in dispute.

10. The main contention of the claimant is that the accident was occurred only due to the rash and negligent driving of the first respondent and he was not at fault. The claimant, in order to prove the mode of accident, has examined himself as P.W.1 and further examined 2 medical officers and also staff attached to the Regional Transport Office as P.W.2 to P.W.4 respectively. Admittedly, on the basis of the complaint lodged by one Krishnan, FIR came to be registered in Crime No.332 of 2006 on the file of Thirupparankundram Police Station for the offences under Sections 279 and 337 IPC against the claimant, wherein, it has been stated that when the defacto complainant and the first respondent were proceeding from Thirupparankundram towards Madurai, at about 10.00 p.m. on 22.06.2006 in a Moolakarai road near Amirthanathamayi mutt, a two wheeler bearing Registration No.TN-59-S-7470, which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler driven by the first respondent and as a result of which, the first respondent was thrown out and sustained serious injuries and that the



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rider of the two wheeler in TN-59-S-7470 Ramakrishnan was only responsible for the accident. The jurisdictional police, after completing the investigation, has filed a final report against the claimant alleging that the accident was occurred only due to the rash and negligent driving of the claimant Ramakrishnan.

11. The learned counsel appearing for the claimant would submit that though the charge sheet came to be filed against the claimant, subsequently the claimant was discharged from the case under Section 258 Cr.P.C. as per the Lok Adalat award dated 23.11.2013. It is evident from Ex.P.16-Lok Adalat award that since the case was pending for very long time without any progress and taking note of the fact that the complainant had no objection to dispose of the case under Section 258 Cr.P.C., the case was recorded as settled. As rightly contended by the learned counsel appearing for the insurer and also as rightly observed by the Tribunal, the said Lok Adalat award closing the criminal case as settled under Section 258 Cr.P.C., by no stretch of imagination, can be taken as that the charge of rash and negligent driving was not proved by the prosecution and that therefore, he was acquitted. Hence, the Lok Adalat award closing the case



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as against the claimant cannot be relied on by the claimant to show that he was not at fault. Even assuming for arguments sake that even if the claimant was acquitted by the criminal Court by holding that the charge of rash and negligent driving was not proved, the same will not bind the Tribunal and that by itself is not sufficient to hold that the claimant was not at fault. It is settled law that the opinion of the investigating officer in the final report filed by him or the judgment of the criminal Court is not binding on the Tribunal and the Tribunal is duty bound to consider the evidence available before it and to decide independently as to who was responsible for the accident.

12. The learned counsel appearing for the insurer would contend that since in the connected claim petition filed by the first respondent, there was a specific finding given by the Tribunal that the present claimant alone was responsible for the accident and on that basis, mulcted liability on the owner and insurer of the vehicle driven by the claimant herein and that this Court has also confirmed the same in the appeal filed by the insurer and as such, the finding of the Tribunal that the accident now in dispute was occurred only due to the rash and negligent driving of the



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claimant has attained finality and that therefore, the present claimant is not entitled to canvass again that he was not at fault. This Court finds much merits in the said contention. But the learned counsel appearing for the claimant would submit that since the claimant is not a party to the other claim petition in M.C.O.P.No.19 of 2007, the finding recorded by the Tribunal, which was confirmed by the appellate Court, is not binding on the claimant and that therefore, he is certainly entitled to take a defence and to prove that he was not responsible for the accident. But as rightly contended by the learned counsel appearing for the insurer, owner of the vehicle, which was driven by the claimant and the insurer of the said vehicle were the parties in the earlier claim petition, that the driver or rider cannot be considered as a necessary party and that therefore, even though the claimant is not a party, the finding given by the Tribunal and by the appellate Court are very much binding on the claimant.

13. According to the claimant, the claimant was proceeding from Madurai to Thirupparankundram from north to south on the left side of Madurai to Thirupparankundram road and at that time, the first respondent came in the opposite direction i.e., from south to north. The investigating



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officer, in the rough sketch as well as in the observation mahazar, has specifically stated that the accident was occurred on the western extremity of the main road and on that basis, laid the final report.

14. Though the claimant has alleged that he gave a complaint to the concerned police but the same was not entertained, as rightly observed by the Tribunal, the claimant has not produced the copy of the complaint given to the concerned police and even assuming for arguments sake that his complaint was not received, he has not shown that he approached the higher police officials and lodged a complaint against the concerned police for not entertaining his complaint. No doubt, the claimant has filed a petition before this Court in CrI.O.P.No.6474 of 2006 seeking direction to the Sub Inspector of Police, Thirupparankundram Police Station to register a case on the claimant's complaint dated 25.06.2006 and investigate the same according to law and a learned Judge of this Court, vide order dated 06.09.2006, taking note of the fact that FIR was already registered and the case was under investigation, direction to register another case is alien to the Code of Criminal Procedure, directed the Sub Inspector of Police to examine the claimant, who was also allegedly



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involved in the accident, under Section 161 Cr.P.C. and record his statement and with the said observation, the petition was ordered to be dismissed. The learned counsel appearing for the claimant would submit that the police authorities has not chosen to record the statement of the claimant and they have violated the order of this Court. But as rightly observed by the learned trial Judge, if the claimant is aggrieved by his non-examination under Section 161 Cr.P.C. as directed by this Court, he could have very well approached the High Court with contempt proceedings. But admittedly, the claimant has not taken any such proceedings.

15. As already pointed out, though the investigating officer has filed the charge sheet and the same was taken on file by the Jurisdictional Magistrate, it is not the case of the claimant that he has challenged the final report in the manner known to law.

16. R.W.2-Sub Inspector of Police attached to Thirupparankundram Police Station would depose on the basis of the records available and according to him, perusal of the records would reveal that the claimant



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alone rode his bike on the wrong side of the road and caused the accident.

As rightly contended by the learned counsel appearing for the insurer, in case, if the claimant was only proceeding on the left side i.e., on the east of north-south main road, there was no chance or possibility for the accident to have occurred on the western extremity of the north-south road. As rightly observed by the Tribunal, if the claimant was riding his bike on the proper side, the accident could have occurred on the eastern side of the road. Considering the entire evidence available on record, this Court has no hesitation to hold that the claimant alone was responsible for the accident and as such, the finding of the Tribunal in this regard cannot be found fault with. The Tribunal, by holding that the claimant being the tortfeasor, is not entitled for the claim, has rightly dismissed the claim petition. Hence, this Court is not inclined to interfere with the order of the dismissal passed by the Tribunal and as such, the appeal is liable to be dismissed.

17. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



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18. In the result, this Civil Miscellaneous Appeal is dismissed.

Parties are directed to bear their own costs.

26.04.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accidents Claims Tribunal/
IV Additional Subordinate Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.161 of 2018

Dated : 26.04.2024