



C.M.A.(MD)No.826 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.826 of 2014

M.Rajkumar

... Appellant/Petitioner

-VS-

1. P.Shanmuga Raja

2. The New India Assurance Company Limited,
East Cross Chambers 1st Floor,
92, G.N. Chetty Road,
Chennai – 17.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.184 of 2005, dated 12.07.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Sivagangai.

For Appellant : Mr.S.Pugalendhi

For Respondents : Mrs.P.Malini – for R2
: No appearance – for R1



C.M.A.(MD).No.826 of 2014

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/petitioner as against the order passed in M.C.O.P.No.184 of 2005, dated 12.07.2010, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Sivagangai, wherein, the petitioner herein has filed a petition for compensation of Rs.2,50,000/- and the same was dismissed by the Tribunal. As against the order passed by the Tribunal, the petitioner has filed the present Civil Miscellaneous Appeal.

2. According to the petitioner, on 28.08.2004, at about 12.45 p.m, when he was traveling in the first respondent Mini Door Van bearing Registration No.TN-63-D-2711, proceeding from Maruthipatti to Chinna Nachiarpuram Village, the first respondent drove the vehicle in a rash and negligent manner and caused the accident. The vehicle was capsized, thereby the petitioner sustained injuries. The accident took place due to the negligence on the part of the driver, who is the first respondent herein and thereby, the appellant claims a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as compensation.



C.M.A.(MD).No.826 of 2014

WEB COPY

3. The case of the second respondent is that the petitioner has to prove each and every allegation. The first respondent's vehicle was not involved in the above said accident. The particulars of the first respondent's vehicle was not mentioned in the Karaikudi Government Hospital Accident Register. In fact, the petitioner met with an accident by some other Motor Bike. The driver/ first respondent was not holding due and valid driving licence to drive the vehicle involved in the accident and hence, the second respondent is not liable to pay the compensation to the petitioner.

4. In order to prove the claim of the petitioner, he examined P.W.1 to P.W.4 and marked Exs.P1 to P.9. On the side of the respondents, they have examined R.W.1 to R.W.3 and marked Exs.R1 to R10 and C1 was marked through witness.

5. After analyzing oral and documentary evidences, the Tribunal has dismissed the application by holding that the claimant sustained injuries due to the accident by falling down from a Motor Bike and the first respondent's vehicle was not involved in the accident.



C.M.A.(MD).No.826 of 2014

WEB COPY

6. Aggrieved over the said order, the appellant/claimant has filed this appeal on various grounds.

7. The learned counsel appearing for the appellant would contend that P.W.1 to P.W.4 and the particular eyewitness categorically stated about the accident and the rash and negligent driving on the part of the first respondent and the Tribunal failed to peruse the additional evidence of the appellant and erroneously dismissed the application stating that the Mini Door Van was not involved in the said accident. The appellant/petitioner has proved that the first respondent vehicle only involved in this accident and the first respondent vehicle was insured with the second respondent/Insurance Company, thereby the respondents are liable to pay compensation to the petitioner. Hence, this appeal is liable to be allowed.

8. The learned counsel appearing for the second respondent contended that the first respondent's vehicle was not involved in the accident and in fact the petitioner fell down from the Motor cycle and the same was ridden by one Kaviyarasan, who was examined as P.W.2. Moreover, R.W-2, the Doctor has also categorically stated that the injuries must have been sustained by the



C.M.A.(MD).No.826 of 2014

claimant due to the Motor Cycle accident only. Thereafter, since the rider of two wheeler did not have valid license, the first respondent's vehicle was included in this case in order to get compensation. The respondents side evidence clearly proves the case that the first respondent's vehicle was not involved in the accident and thereby, after taking into consideration of all the aspects, the Tribunal has dismissed the application. Hence, this appeal is liable to be dismissed.

9. 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 as follows:

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

10. In this case, the involvement of the vehicle in the accident itself was denied by the respondent. According to the Appellant/Petitioner, the first respondent vehicle involved in the accident and the accident took place due to rash and negligent driving of the first respondent and thereby the appellant sustained injuries. The respondent's contention is that the vehicle involved in the accident was a two wheeler, since the rider of two wheeler did not have



C.M.A.(MD).No.826 of 2014

WEB COPY

valid license, the first respondent's vehicle was included in this case in order to get compensation. The appellant in order to prove his case he examined P.W.1 to P.W.4, and they deposed that only due to the rash and negligent driving of the first respondent, the accident took place. On the side of the respondents, R.W.2, the Doctor was examined, who in his evidence deposed that the injured fell down from the two wheeler. Moreover, an FIR has been registered as against one Kaviyarasan rider of two wheeler and no FIR has been registered as against the first respondent/ driver. The evidence of R.W.2, which is the First Information given by the rider of vehicle before the Doctor and registered immediately after the occurrence shows that the petitioner sustained injuries only through two wheeler accident. Therefore, from the above evidence it is clear that the accident took place through two wheeler. The Tribunal after taking into consideration all the aspects fairly concluded that the first respondent's vehicle was not involved in the said accident and hence, dismissed the petition. There is no any infirmity or perverse found in the order passed by the Tribunal and this Court has no warrant to interfere with the order passed by the Tribunal.



C.M.A.(MD).No.826 of 2014

WEB COPY

11. In view of the above said discussions, this Court is of the opinion that there is no merit in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

09.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.826 of 2014

P.DHANABAL,J.

ebsi

C.M.A(MD)No.826 of 2014

09.01.2024