



C.M.A(MD)No.1170 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.03.2024

CORAM:

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

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Malaiappan

... Petitioner/Appellant

Vs.

1.M.S.Jainulabudeen

2.The National Insurance Company Limited,
Represented by its Assistant Administrative Officer,
Having office at No.1754-56, Manojiappa,
Street, Thanjavur Taluk and Munsif. ... Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, to set aside the judgment and decree, dated 29.12.2005 in M.A.C.T.O.P.No.373 of 2004 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Thanjavur by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.C.Bharathi

For R-2 : Mr.S.Srinivasa Raghavan



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.A.C.T.O.P.No.373 of 2004 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Thanjavur, wherein the appellant herein has filed a petition, claiming compensation for injury sustained by him in a road accident. The Tribunal has dismissed the petition. Hence, the present Civil Miscellaneous Appeal is filed as against the order passed by the Tribunal.

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

3. According to the appellant, on 15.11.2003 at about 12.00 pm, when he was proceeding Kannandhangudi main road in a two-wheeler, at that time, the first respondent vehicle came in a rash and negligent manner and dashed against the motor-cycle. Due to which, he sustained grievous injuries and he was admitted in the hospital and he was taken treatment as in-patient from 15.11.2003 to 22.12.2003. Thereby, he incurred medical expenses and also he was permanently disability. Hence, he claimed



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compensation of Rs.4,00,000/-.

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4. According to the second respondent, the petition is not maintainable and the petitioner is put to stick proof of the manner of accident and the involvement of the vehicle. The first respondent vehicle was not insured with the second respondent and the driver of the first respondent has no valid license and thereby, the second respondent is not liable to pay compensation.

5. Before the Tribunal, on the side of the petitioner, he himself examined as P.W.1 and also examined two other witnesses and marked Exhibits P.1 to P.10. On the side of the respondents, no witnesses were examined and no documents were marked.

6. The Tribunal after considering the evidences, dismissed the petition on the ground that, the petitioner failed to prove that the first respondent vehicle involved in the accident. As against the order passed by the Tribunal, the petitioner has preferred this appeal.



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7. The learned Counsel appearing for the appellant would contend that the petitioner sustained injuries due to the road accident and the first respondent vehicle dashed against the motor cycle of the petitioner and thereby, he sustained grievous injury. The petitioner has examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.10. As per Exhibit P.2, Medical Attendance Report, the first respondent vehicle was involved in the accident and immediately he was admitted in the hospital and the first respondent vehicle was also subject to motor vehicle inspection and the petitioner had produced Exhibit P.9 disability certificate and thereby, proved that the accident took place due to the negligence on the part of the first respondent driver. But the Tribunal failed to consider the same and as per the report, the first respondent vehicle was not involved in the accident. Therefore, the order passed by the Tribunal is liable to be set aside by allowing this appeal.

8. The learned Counsel appearing for the respondent would contend that in the FIR, there is one day delay and in the medical records, no where stated about the involvement of this vehicle and the vehicle number was included later and the complaint was also lodged belatedly. Therefore, the



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Tribunal rightly held that the petitioner has failed to prove the involvement of the vehicle in the accident and thereby, correctly dismissed the petition. Therefore, the present appeal is liable to be dismissed.

9. This Court had heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in this appeal are:

- 1) Whether the first respondent vehicle is involved in the accident and the accident took place due to the negligence on the part of the driver of the first respondent?
- 2) Whether the petitioner is entitled to any compensation?
- 3) Whether the appeal has to be allowed or not?

Point No.1:

10. According to the appellant / petitioner, he sustained injuries due to the road accident, dated 15.11.2023 at about 12.00 pm near Orathanadu, Kannandhangudi main road. The respondents have denied the involvement of the vehicle in the accident. Therefore, the petitioner has to prove the involvement of the vehicle in the accident. The petitioner, after the



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accident admitted in the hospital. In the hospital, the Accident Register not mentioned about the registration number of the vehicle and they only stated that four-wheeler (i.e.,) the first information. But the present Motor Vehicle Inspection report reveals that there is three-wheeler Bajaj load auto. The FIR also not registered immediately along with the vehicle number and only registered on the next day by including the first respondent vehicle. Further the petitioner has not produced any criminal Court records, as to whether any charge sheet was filed as against the driver of the vehicle and whether he had admitted the offence. The petitioner had examined P.W.2 and he was not an eye witness to the occurrence but he only admitted the petitioner in the hospital and he deposed before the Court that he wrongly stated before the Doctor that, the van dashed against the petitioner instead of mini load auto. Since P.W.2 is not an eye witness and no other records to show that the first respondent vehicle was involved in the accident, the petitioner failed to prove the involvement of the vehicle in the accident. Since this Court has decided that the first respondent vehicle was not involved in the accident, no question of negligence would arise.



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Point No.2:

11. Since this Court has already decided in the previous point that the vehicle was not involvement in the accident, the petitioner is not entitled to compensation as against these respondents. Therefore, the petition is liable to be dismissed. Thus the point is answered.

Point No.3:

12. The Trial Court also in the order elaborately discussed about the evidences adduced by the petitioner side and after considering the evidences, fairly came to a conclusion that the petitioner failed to prove the involvement of the vehicle in the accident. Therefore, there is no any perversity or infirmity found in the order passed by the Tribunal. Therefore, this Court is of the opinion that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Thus the point is answered.

13. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

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

To

- 1.The Motor Accident Claims Tribunal cum
Principal Subordinate Judge,
Thanjavur.
- 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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