



C.M.A. (MD) No. 588 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2023

Pronounced on : 12.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.588 of 2018

M.Surilirajan

... Appellant/
Petitioner

Vs.

1. M/s.Dharani Finance Ltd.,
Ram Buildings, Trichy Main Road,
Namakkal.
2. New India Insurance Co. Ltd.,
represented by its Branch Manager,
Rajapalayam.
3. V.Jayabharathi
4. United India Insurance Co. Ltd.,
represented by its Branch Manager,
Rajapalayam.

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed in M.C.O.P.No.314 of 2000 dated 30.06.2003 on the file of the learned Motor Accident Claim Tribunal cum Subordinate Judge, Srivilliputhur and allow the appeal.



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For Appellant	: Mr.T.Selva Kumaran
For R2	: Mr.A.Ilango
For R3	: No appearance
For R4	: Mr.J.S.Murali

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order dismissing the claim petition in M.C.O.P.No.314 of 2000 dated 30.06.2003 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Srivilliputhur.

2. The case of the appellant is that on 01.06.2000, the appellant was proceeding in an Ambassador car bearing Registration No.TN-72-Y-0459 with one Saravanan as passenger from Tenkasi to Rajapalayam and at the place near Rajapalayam Jeyaram Petrol Bunk, a lorry bearing Registration No.TN-28-C-1527, which came in the opposite direction in a rash and negligent manner, had dashed against the Ambassador car and as a result of which, the appellant as well as the passenger Saravanan had sustained



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bone injuries and other injuries all over their body, that the appellant was taken to Government Hospital, Rajapalayam and subsequently he was shifted to Jawahar Hospital, Rajapalayam and that the accident was occurred only due to the rash and negligent driving of the lorry driver.

3. The appellant's further case is that he was working as a driver in the Ambassador car owned by the third respondent, that he was getting monthly salary at Rs.1,000/- and Rs.3,000/- per month as commission, that he had sustained permanent disability and that therefore, he was constrained to file the above claim petition seeking compensation.

4. The defence of the second respondent is that the lorry driver had driven the lorry in a normal speed and in a careful manner observing all the traffic rules and regulations from North to South, that the Ambassador car was driven by the appellant from South to North with full speed in a zig zag manner without adhering the basis traffic rules, that the lorry driver, on noticing the car, moved the vehicle to his left side after blowing horn and stopped the vehicle, that the appellant by his own act moved to the wrong side of the road and caused his vehicle to be hit against the lorry



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and caused the accident, that the appellant, after dashing against the lorry, had also dashed against a TVS Champ bearing Registration No.TN-67-W-0027 and thereafter dashed against an electrical post standing on the eastern side of the North-South road and stopped the vehicle, that the appellant alone has contributed for the accident by his rash and negligent driving and not due to the rash and negligent driving of the lorry driver, that FIR came to be registered against the claimant-car driver and after investigation, final report came to be filed against the claimant and that therefore, the second respondent is not liable for the claim.

5. The third respondent has taken a stand that the Ambassador car driver had driven the vehicle in a very careful and slow manner observing all the traffic rules and at that time, the lorry bearing Registration No.TN-28-C-1527 came in the opposite direction in a most rash, negligent and uncontrollable manner and dashed against the Ambassador car, that the car driver gave horn on seeing the rash driving of the lorry driver and almost stopped the vehicle, but even then the lorry driver had dashed against the car and the inmates have become unconscious, that the lorry driver utilizing the opportunity has preferred a false complaint before the



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police, as if, the car driver was responsible for the accident and that therefore, the third respondent is not liable for the claim.

6. It is their further defence that the third respondent being the owner of the vehicle had insured the vehicle with the fourth respondent and in case, if any liability is fixed, it has to be satisfied only by the fourth respondent.

7. The defence of the fourth respondent is that the Ambassador car was driven by the appellant himself from Tenkasi to Rajapalayam in a moderate speed, that when the Ambassador car was coming near Jeyaram Petrol Bunk at Tenkasi – Rajapalayam main road at about 07.30 p.m. on 01.06.2000, the lorry bearing Registration No. TN-28-C-1527, which came in the opposite direction in a rash and negligent manner, had dashed against the Ambassador car and as a result of which, the Ambassador car was highly damaged, that the appellant and the passenger of the car had sustained bone injuries and other serious injuries, that both of them were admitted in Rajapalayam Government Hospital and while they were in unconscious stage, the lorry driver, taking advantage of the same, has



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lodge the complaint against the Ambassador car driver, as if, he was responsible for the accident, that the appellant has not claimed any relief against the respondents 3 and 4 and that therefore, the fourth respondent is not liable to pay any compensation.

8. During trial, the appellant has examined himself as P.W.1 and Dr. Jawaharlal as P.W.2 and exhibited 8 documents as Ex.P.1 to Ex.P.8. The first respondent had remained *ex parte*. The second respondent has examined its officer Anandharaman as R.W.1 and adduced no documentary evidence. The respondents 3 and 4 have adduced neither oral nor documentary evidence.

9. 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 30.06.2003, by holding that the appellant being the driver of the Ambassador car is the tortfeasor and as such, is not entitled to claim any compensation, dismissed the claim petition. Aggrieved by the dismissal of the claim petition, the claimant has preferred the present appeal.



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10. The main contention of the appellant is that the Tribunal erred in dismissing the claim petition on the ground that the appellant had pleaded guilty before the criminal Court, that the Tribunal has failed to take note that any decision in a criminal case is not binding on a civil Court and that the impugned order mainly relying on the decision of the criminal case is legally not sustainable and the same is liable to be set aside.

11. It is pertinent to note that the accident and the involvement of the Ambassador car bearing Registration No.TN-72-Y-0459 and the lorry bearing Registration No.TN-28-C-1527 is not in dispute. It is also not in dispute that the Ambassador car bearing Registration No.TN-72-Y-0459 was owned by the third respondent and the same was insured with the fourth respondent. It is also not in dispute that the lorry bearing Registration No.TN-28-C-1527 was owned by the first respondent and the same was insured with the second respondent. It is also not in dispute that the appellant, who was working under the third respondent, had driven the Ambassador car at the time of accident and claimed compensation for the disability allegedly suffered by him in the said accident.



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12. As already pointed out, it is the specific case of the second respondent that the accident was occurred only due to the rash and negligent driving of the Ambassador car driver, but whereas, according to the appellant and the respondents 3 and 4, the accident was occurred only due to the rash and negligent driving of the lorry driver and the Ambassador car driver was not at fault.

13. It is admitted by both the parties that on the basis of the complaint lodged by the lorry driver, FIR came to be registered against the appellant in Crime No.389 of 2000 of Rajapalayam South Police Station for the offences under Sections 279 and 337 IPC and that after investigation, charge sheet came to be filed only against the appellant.

14. It is pertinent to note that the appellant as P.W.1 would admit categorically that he had pleaded guilty and on that basis, the criminal Court has convicted him by imposing fine and that he had paid the fine amount.

15. The second respondent in their counter statement have taken a stand that the appellant, after dashing against the lorry, had again



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proceeded further and dashed against the two wheeler TVS Champ bearing Registration No. TN-67-W-0027 and thereafter dashed against the electrical post and stopped. The appellant as well as the respondents 3 and 4 have not specifically disputed the above factum. As rightly pointed out by the learned counsel appearing for the second respondent, except the appellant, the appellant's side has not chosen to examine any other person, who had allegedly witnessed the occurrence. Though the respondents 3 and 4 have taken a specific stand that the lorry driver alone was responsible for the accident and the Ambassador car driver was not at fault, they have not adduced any evidence to substantiate the same. Considering the evidence available on record, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the appellant, cannot be found fault with and this Court is in entire agreement with the finding recorded by the Tribunal.

16. As rightly contended by the learned counsel appearing for the second respondent, since the appellant is the tortfeasor, the Tribunal has rightly come to a decision that the appellant is not entitled to get any compensation.



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17. No doubt, the learned counsel appearing for the appellant has canvassed a new argument before this Court that the Tribunal ought to have granted compensation under the Workmen's Compensation Act, since the evidence adduced by the appellant accepted the negligence with respect to the Workmen's Compensation Act and that therefore, the claim petition filed under the Motor Vehicles Act has to be converted as a petition under the Workmen's Compensation Act and granted compensation. Moreover, the learned counsel appearing for the appellant has relied on the judgment of a Division Bench of this Court in ***Oriental Insurance Co. Ltd. Vs. Kaliya Pillai and others*** reported in **2003 ACJ 1021**, wherein, this Court, by confirming the finding of the Tribunal that the accident was occurred only due to the rash and negligent act of the deceased himself and since it occurred during the course of his employment, the parents of the deceased cannot claim compensation from the owner/insurer of the vehicle under the Motor Vehicles Act and in order to shorten the litigation, decided to dispose of the appeal by invoking the provision of Workmen's Compensation Act.

18. A Division Bench of the Hon'ble Supreme Court in the case of ***The Oriental Insurance Company Limited Vs. Meena Variyal and others***



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reported in (2007) 5 SCC 428, by referring to its earlier decision in *National Insurance Co. Ltd. Vs. Swaran Singh and others* reported in AIR 2004 SC 1531, has held that the deceased being an employee not covered by the Workmen's Compensation Act, of the insured, the owner of the vehicle, has not to be covered compulsorily under the Act and only by entering into of a special contract by the insured with the insurer could such a person be brought under coverage and there is no case that there is any special contract in that behalf in this case. Similarly, though the third respondent has alleged that her vehicle Ambassador car was insured with the fourth respondent, they have not elaborated anything further. Admittedly, the insurance policy in respect of the Ambassador car issued by the fourth respondent has not been produced so far by the respondents 3 and 4. Moreover, the claimant being the driver of that car has also not chosen to produce the copy of the insurance policy. The claimant has also not taken any steps for summoning or for production of the copy of the insurance policy from the respondents 3 and 4. In the absence of the insurance policy and in the absence of any evidence with regard to the terms of the contract, this Court cannot decide the case by invoking the provision of Workmen's Compensation Act.



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19. Considering the above, the impugned order of the Tribunal dismissing the claim petition cannot be found fault with. Consequently, this Court concludes that the appeal is devoid of merit and the same is liable to be dismissed. 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.

20. In the result, this Civil Miscellaneous Appeal is dismissed.
Parties are directed to bear their own costs.

12.01.2024

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

1. The Motor Accidents Claims Tribunal/
Subordinate Court, Srivilliputhur.
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
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Dated : 12.01.2024