



C.M.A.(MD).No.1183 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1183 of 2017

P. Paulraj

... Appellant/Claimant

-VS-

P. Srikumar

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.48 of 2012, on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai, dated 25.07.2017.

For Appellant : Mr. C.K.M.Appaji

For Respondent : Mr.K.Sreekumaran Nair

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimant in M.C.O.P.No.48 of 2012, on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai, challenging the dismissal of the claim petition, on the ground that the claimant has not established the negligence on the part of the respondent in the claim petition.



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2. According to the claimant, he was driving a two wheeler on 29.05.2011, at about 07.45 p.m., from south to north direction in Kuzhithurai to Arumani road. At that point of time, another two wheeler, a Bullet, owned and driven by the respondent came from behind and dashed against the rear side of the bike. In the said accident, the claimant has sustained grievous injuries. Hence, he prayed for a compensation of Rs.3,00,000/- (Rupees Three Lakhs only).

3. The respondent has filed a counter contending that the claimant had driven a two wheeler inebriated mood and he was on the wrong side of the road. Therefore, the entire negligence is on the part of the claimant.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the claimant has not established that the accident has taken place due to the negligence on the part of the respondent and proceeded to dismiss the claim petition. Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the claimant, Ex. P7 and Ex.P.8, namely, Rough Sketch and Motor Vehicle Inspector's Report



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would clearly indicate that the accident has taken place due to the negligence on the part of the respondent.

6. Per contra, the learned counsel appearing for the respondent herein had contended that the claimant was inebriated mood, and he was wrong side of the road and therefore, he is not entitled to receive any compensation and hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. A reading of the claim petition as well as the counter reveals that there was a head on collision between both the vehicles. A perusal of Ex.P8 – Motor Vehicle Inspector's Report of both the vehicles reveals that both the vehicles have been damaged extremely in the front side. Therefore, it is clear that it is the case of head on collision between both the vehicles. A perusal of Ex.P7 – Rough Sketch prepared by the police officials indicates that the accident has taken place on the western side of the road which is the right lane for the claimant, who was moving from south to north direction. In such circumstances, this Court is of the considered opinion that the respondent



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alone had come to the wrong side of the road. However, the claimant could have avoided the accident. Therefore, this Court is of the opinion that with regard to the negligence, the rider of both the two wheelers are equally responsible for the accident.

9. The claimant had contended that he was 38 years old and he was a mason, earning a sum of Rs.10,000/- per month, however, no records have been placed before the Court for establishing the same. A perusal of Ex.P4 – reveals that the appellant/claimant has taken treatment and spent a sum of Rs.11,800/-. There are no records to establish that the claimant has suffered any partial disablement.

10. In such circumstances, this Court is inclined to award a sum of Rs.11,800/- (Rupees Eleven Thousand and Eight Hundred only) towards Medical Expenses, a sum of Rs.5,000/- towards pain and sufferings and a sum of Rs.3,000/- towards loss of income during the treatment period. In total, a sum of Rs.19,800/- (Rupees Nineteen Thousand and Eight Hundred only). The award of the Tribunal is hereby set aside and the award is passed in favour of the claimant. The award amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.



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The award amount shall be deposited by the respondent within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same by filing necessary petition before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs.

25.07.2024

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

1. The Motor Accident Claim Tribunal,
Sub Court, Kuzhithurai,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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