



C.M.A(MD)No.271 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.271 of 2017

Marimuthu

... Appellant/Claimant

Vs.

1.R.Marimuthu

2.Palanivelu

3.The Branch manager,
The National Insurance Company Limited,
Kumbakonam,
Thanjavur District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decretal order made in M.C.O.P.No.293 of 2007, dated 07.10.2016 by the learned Motor Accident Claims Tribunal / III Additional District and Sessions Judge, Thanjavur at Pattukkottai.

For Appellant : Mr.S.Deenadhayalan

For R3 : Mr.N.S.Ramakrishnadas



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JUDGMENT

WEB COPY The present appeal has been filed by the claimant in M.C.O.P.No. 48 of 2012 on the file of Motor Accident Claims Tribunal / III Additional District and Sessions Judge, Thanjavur at Pattukkottai challenging the order wherein his claim petition was dismissed in entirety by the claims tribunal.

2. According to the claimant, when he was riding a two wheeler, another two wheeler owned by the 2nd respondent and driven by the 1st respondent and insured with the 3rd respondent came from the opposite direction in a rash and negligent manner and dashed against the two wheeler driven by the claimant. In the said accident, the claimant sustained serious injuries. He has prayed for a compensation of Rs.5,00,000/-.

3. The owner and driver of the offending vehicle had remained ex parte and the insurance company has filed a counter contending that the offending vehicle was parked on the left side of the road for want of fuel. The claimant had driven the two wheeler in a rash and negligent manner and dashed against the two wheeler that was parked on the left side corner of the road. Therefore, the claimant himself is the tortfeasor and not entitled to seek any compensation.



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4. The tribunal after relying upon Exhibit P.1/FIR, has arrived at a finding that the claimant himself is the tortfeasor and therefore, he is not entitled to receive any compensation by making allegation as against the offending vehicle. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant/claimant, even assuming that the offending vehicle was parked on the left side corner of the road, being night time at 9.30 p.m, the parking light should have been switched on. However, there is defence to the said effect. In such an event, the negligence should be attributed to the offending vehicle also for parking the vehicle without the parking lights. He further contended that the respondents have not let in any evidence whatsoever to show that the offending vehicle was not in a moving stage. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the Insurance Company had contended that the entire burden is upon the claimant to establish the fact that there was negligence on the part of the offending vehicle. In the present case, the owner of the two wheeler has lodged an

F.I.R to the effect that the offending vehicle was parked on the left side



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of the road for want of fuel. That apart, in his evidence, the claimant has admitted that the offending vehicle was stated to be parked on the left side of the road for want of fuel as per the statement in the F.I.R. However, the claimant has not chosen to dispute the said fact in his claim petition. In such circumstances, the tribunal was right in arriving at a finding that the claimant himself is a tortfeasor and he prayed for sustaining the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The accident has taken place on 23.08.2011. An F.I.R has been lodged by the 2nd respondent in the claim petition, who is the owner of the offending vehicle on 26.08.2011 contending that he had parked the vehicle on the left side of the road for want of fuel. In the said F.I.R, the claimant was shown as the accused person. Therefore, it is clear that the claimant was very well aware that the F.I.R has been lodged as against him, in which it is categorically stated that the offending vehicle was parked on the left side of the road for want of fuel. However, while filing the claim petition in the year 2012, no averment has been made to dispute the said fact. Though the claimant has been acquitted from the criminal case, the claimant has miserably failed to establish before the



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Court that the accident has taken place only due to the rash and negligent driving on the part of the offending vehicle. In fact, the offending vehicle is said to be a parked vehicle. Therefore, the tribunal was right in arriving at a finding that the claimant himself is the tortfeasor.

9. Even assuming that the claimant is a tortfeasor, under Section 140 of the Motor Vehicles Act, he is entitled to receive a compensation of Rs.25,000/- having sustained permanent disability. In such circumstances, the appeal is partly allowed directing the 3rd respondent / Insurance Company to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) under Section 140 of the Motor Vehicles Act. The said amount shall carry an interest at the rate of 7.5% from the date of claim petition. The amount shall be deposited within a period of eight (8) weeks from the date of receipt of copy of this order.

10. With the said observations, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

24.04.2024

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



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1.The Motor Accident Claims Tribunal /
III Additional District and Sessions Judge,
Thanjavur at Pattukkottai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
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