



C.M.A. (MD)No.349 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.349 of 2017

J.Karuppasamy

: Appellant/Petitioner

Vs.

1.Chithiraimuthu

2.Ramamoorthy

3.S.Palanisamy

4.The Regional Manager,

Iffco-Tokyo General Insurance Company Ltd.,

No.82, Preetham Plaza, 1st Floor,

Chandragandhi Nagar, Ponmeni,

Bypass Road, Madurai.

: Respondents/ Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.381 of 2011 on the file of the IV Additional Sub Court, Madurai, dated 21.12.2015.

For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.B.Senthilkumar, for R1.

: Mr.S.Srinivasa Raghavan, for R4.

: No Appearance, for R2 and R3.



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.381 of 2011 on the file of the IV Additional Sub Court, Madurai, dated 21.12.2015.

2. The case of the claimant is that when he was travelling as pillion rider in a two wheeler bearing Registration No.TN-67-F-2782 at about 12.30 pm., on 29.05.2010, opposite to the Kariapatti Government Higher Secondary School, one two wheeler bearing Registration No.TN-38-D-3255, which came from south to north in a rash and negligent manner and while overtaking the van, had dashed against the backside of the two wheeler bearing Registration No.TN-67-F-2782 and as a result of which, the claimant has sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the respondents 1 and 3.

3. The respondents 1 to 3 had remained ex-parte. The fourth respondent insurer has filed a counter statement stating that the accident



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was occurred only due to the rash and negligent driving of the first respondent and that since the second respondent is the owner of the two wheeler ridden by the first respondent, they are liable for the claim and that since the third respondent is noway responsible for the accident, the fourth respondent being the insurer of third respondent is not liable for any claim.

4. During trial, the claimant has examined himself as P.W.1 and Medical Officer Thiru. Shanmugam as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The fourth respondent has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order, dated 21.12.2015, by holding that the accident was occurred only due to the rash and negligent driving of the first respondent, mulcted liability on the second respondent and directed the second respondent to pay compensation of Rs.1,78,493/- with interest and costs and dismissed the claim petition as against the respondents 3 and 4. The claimant, aggrieved by the dismissal of the claim petition as against the



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respondents 3 and 4 and the finding of the trial Court that the accident was occurred only due to the rash and negligent driving of the first respondent, has preferred the present appeal.

6. The learned counsel for the appellant would submit that the claimant in the claim petition has specifically averred that the accident was occurred only due to the rash and negligent driving of both the two wheelers and as such, all the respondents are jointly and severally liable, but the Tribunal, without considering the evidence in proper perspective, has come to a decision that the first respondent's rashness and negligence was responsible for the accident, mulcted liability only on the second respondent.

7. No doubt, though the claimant in the claim petition has alleged that both the riders of two wheelers were responsible for the accident, he has not given any specific evidence with regard to the responsibility of both the drivers for the accident.



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8. Admittedly, FIR was registered against the first respondent and that the jurisdictional Police, after completing the investigation, has filed the charge sheet against the first respondent. It is pertinent to note that the first respondent has pleaded guilty and he was found guilty and was punished by imposing fine.

9. More importantly, even according to the claimant, the two wheeler driven by the first respondent while overtaking a van, had dashed against the back side of the two wheeler, in which the claimant was travelling as a pillion rider. Even assuming for argument sake that the third respondent had driven the two wheeler in a rash and negligent manner, since the first respondent had dashed his two wheeler on the back side of the two wheeler driven by the third respondent and the accident was occurred in that way, third respondent cannot be found fault with.

10. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent cannot be found fault with.



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11. When the matter is taken up for hearing today, the learned counsel for the appellant would submit that though notice was taken to the second respondent, the same was not served on him as no residence; that the claimant could not find out the correct address of the second respondent, despite his efforts and that the claimant also could not find out the legal heirs of the deceased third respondent, who died pending appeal. He would further submit that the Tribunal has only mulcted liability on the second respondent and since the claimant wanted to shift the liability to the third respondent so as to make the fourth respondent liable, but they are not in a position to take steps for the deceased third respondent and that proceeding further in the appeal only with the respondents 1 and 4 would serve no purpose and as such, the appeal cannot be proceeded against the respondents 1 and 4 and hence, they are leaving it to the decision of the Court.

12. In view of the finding of the trial Court that the accident was occurred only due to the rash and negligent driving of the first respondent and the consequent liability mulcted on the second respondent and also the facts that batta was not paid for the second respondent and steps for the



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deceased third respondent is not yet taken, this Court has no other go, but to dismiss the appeal. Consequently, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

27.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

1. The IV Additional Sub Court, Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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