



CMA(MD).No.925 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 03.04.2024

PRONOUNCED ON : 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.925 of 2017

B.Pari

.....Appellant/Petitioner

Vs.

1.P.Veeranan

2.The National Insurance Company Ltd.,
Represented by its Divisional Manager
7A, North Veli Street
Madurai -1

...Respondents/Respondents

(1st Respondent set exparte in Lower Court,
hence they are given up in CMA)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to modify the ex-order and fair order dated 21.08.2013 made in MCOP.No.278 of 2010 on the file of the Motor Accident Claims Tribunal (IV Additional Subordinate Judge), Madurai by allowing this appeal and award the claim as prayed for by the appellant with costs.



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For Appellant : Mr.R.Surianarayanan

For R1 : Given up

For R2 : Mr.J.S.Murali

J U D G M E N T

The claimant in MCOP.No.278 of 2010 on the file of the IV Additional Subordinate Court, Madurai is the appellant herein.

2.According to the claimant while he was riding a two-wheeler on 24.09.2006, a Car belonging to the first respondent and insured with the second respondent which came from the opposite side and driven in a rash and negligent manner, dashed against the two-wheeler. Due to the said accident, the petitioner has sustained grievous injuries and claimed a compensation of Rs.3.00 lakhs.

3.The owner of the offending vehicle remained exparte and the Insurance Company had filed a counter contending that they are disputing the negligence on the part of the driver of the first respondent's vehicle.

4.After considering the submissions made on either side and relying



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upon Exhibit R1 rough sketch, the Tribunal arrived at a finding that the claimant himself is the tort-feasor and proceeded to award a sum of Rs. 25,000/- under 'No Fault Liability'. Challenging the same, the present appeal has been filed by the claimant.

5. According to the learned counsel appearing for the appellant, the claimant had specifically pleaded that the accident has taken place only due to the rash and negligent driving on the part of the first respondent herein. He had further contended that the claimant had examined PW1 and PW2 to explain the manner of accident. On the other hand, no witness has been examined on the side of the respondents to prove that the accident has taken place only due to the rash and negligent driving on the part of the claimant. Therefore, the Court ought not to have relied upon Exhibit R1, to award only 'No Fault Liability' instead the Court should award the claim amount as prayed for.

6. Per contra, the learned counsel appearing for the Insurance Company had contended that the Tribunal has arrived at a specific finding that the claimant has not established the negligence on the part of the offending vehicle. That apart Exhibit R1-sketch reveals that the claimant was on the wrong side of the road and he was alone responsible for the accident. Hence, he prayed for sustaining the award passed by the Tribunal.



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

8.The claimant in Paragraph No.1 of the claim petition has specifically contended that the accident has taken place only due to the rash and negligent driving on the part of the Car belonging to the first respondent. An F.I.R has been lodged by one of the passengers in the Car which alleges that the claimant was solely responsible for the said accident. The claimant at no point of time has taken any steps to lodge any complaint to the police official alleging that the driver of the Car was responsible for the accident. The Tribunal had arrived at a finding that even after being discharged from the Hospital, he has not chosen to lodge any complaint.

9.Based upon the criminal complaint lodged by the passenger of the Car, a charge sheet was laid as against the claimant. However, he was acquitted. A rough sketch was marked in the said criminal proceedings which in turn has been marked in the claim petition as Exhibit R1. A perusal of Exhibit R1 clearly indicates that the Car was proceeding from South to North and the motor cycle was proceeding from North to South. Therefore, the two-wheeler's rider has to stick to the eastern side of the road. However,



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the rough sketch clearly shows that the accident has taken place on the western side of the road. Therefore, it is clear that the claimant had driven the vehicle on the wrong side of the road and it dashed against the front portion of the Car. Hence, the Tribunal was right in arriving at a finding that the claimant himself was a tort-feasor. Therefore, the Tribunal has awarded only a sum of Rs.25,000/- under Section 140 of the Motor Vehicles Act.

10.Though the burden is upon the claimant to establish that the negligence is on the part of the offending vehicle, he has miserably failed. Therefore, there are no merits in the appeal and the Civil Miscellaneous Appeal stands dismissed. No costs.

17.04.2024

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

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1. The Motor Accident Claims Tribunal
(IV Additional Subordinate Judge),
Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.925 of 2017

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