



C.M.A.(MD).No.919 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.919 of 2023

Krishna Suresh

... Appellant/Claimant

Vs.

1.Ramar

2.Thayabaran

**3.New India Assurance Co.Ltd.,
Pillars Gate, Balamore Road,
Nagercoil,
Agasteeswaram Taluk,
Kanniyakumari District.**

**4.United India Insurance Co.Ltd.,
Assisi Building,
P.W.D. Road,
Nagercoil,
Agasteeswaram Taluk,
Kanniyakumari District.**

5.Alinath

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the record relating to the fair and decreetal order passed by the Motor Vehicle Accidents Claim Tribunal,

1/8



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Nagercoil, cum II Additional Sub Court, Nagercoil in M.C.O.P.No.56 of 2018, dated 19.06.2023 and set aside the same.

For Appellant : Mr.C.Ezhilarasu

For Respondents : Mr.I.Robert Chandra Kumar for R3
Mr.A.S.Mathialagan for R4
Mr.K.Vamanan for R5
R1 – Exparte
R2 – No Appearance

JUDGMENT

This appeal has been directed against the fair and decretal order passed by the Motor Vehicle Accidents Claim Tribunal, Nagercoil, cum II Additional Sub Court, Nagercoil in M.C.O.P.No.56 of 2018, dated 19.06.2023 and set aside the same.

2.The facts in brief:

On 17.04.2015, the petitioner was returned from the College to his house in a vehicle bearing Registration No.74 Q 7569. When he was nearing RC Church, Karavilai East on the Erumbukadu to Rajakamangalam Road at about 5.45 p.m. One Mr.Paramakrishnan @ Radhakrishnan was riding his scooty in front of his vehicle in the very same direction. At that time, ambassador car bearing registration No.TN



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74 L 1703 was driven by its driver in rash and negligent manner in the opposite direction and hit the petitioner's vehicle. In the accident both were thrown out. The petitioner sustained grievous injuries. There was fracture on his right leg. He was taken to PPM Orthopedic hospital Rajakkamangalam and took treatment up to 24.04.2015. Because of the accidental injuries, he was not in position to continue his work as before. Apart from that the vehicle was also completely damaged. Claiming compensation amount of Rs.4,10,000/-, the claim application was filed.

3.That was resisted by the second respondent in the main petition namely, Thayabaran, stating that a case was registered only against the claimant in Crime No.181 of 2015 before Rajakkamangalam Police Station. The third respondent namely New India Assurance Company filed the counter stating that the accident took place because of the rash and negligent driving on the part of the petitioner. So he is not entitled for any compensation. The fourth respondent United India Insurance Company filed a counter stating that only against the respondents 1 to 3 the claim is made and the fourth respondent is unnecessary party. The fifth respondent in the main petition namely Alinath filed a counter



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stating that the occurrence took place because of rash and negligent driving on the part of the ambassador car driver. So only the respondents 1 to 3 are responsible to pay the compensation.

4.Regarding the first point of negligence , the Tribunal recorded a finding that the occurrence took place because of the negligence on the part of the claimant himself. So he is not entitled for any compensation. By finding so, it dismissed the claim application. Against which, this appeal is preferred.

5.The learned counsel for the appellant would submit that even though the case was registered against him, the nature of the occurrence may be taken into account. According to him, another two wheeler came behind him and that two wheeler hit him. Because of the impact he hit the ambassador car, which was coming in the opposite direction. Since he was admitted in the hospital, he was unable to give the complaint immediately. This inability was taken advantage and case was registered against him.



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6.Per contra, the learned counsel for the third respondent would submit that in respect of the very same accident, claim application was filed by the Paramakrishnan @ Radhakrishnan's legal heirs in M.C.O.P.No.36 of 2017 before the Motor Accident Claims Tribunal, Nagercoil, namely Principal Sub Judge, Nagercoil, wherein, this claimant/appellant was arrayed as first respondent. The award was passed in that matter on 25.09.2023, which subsequent to the order of dismissal in this matter. The appellant also appeared before the Tribunal through his Advocate and contested the matter. He contended before the Court that the Ambassador car bearing registration No.TN 74 L 1703 was driven by 6th respondent namely Ramar in rash and negligent manner and hit against the deceased and as well as his vehicle. He sustained injuries. The manner of accident was taken into account by the Tribunal and recorded the finding that the occurrence took place because of the rash and negligent driving on the part of this appellant. Against which, it appears that no appeal was preferred either by the Insurance Company or by this appellant himself. That order is now become final. Similarly in this matter also the very same conclusion was reached. Even though M.C.O.P.No.36 of 2017 on the file of the Principal Sub Judge, Nagercoil



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was rendered subsequent to the order passed in the present MCOP, the conclusions are one and the same.

7. So in view of the above said situation, the counsel for the third respondent submits that no contrary finding can be recorded, unless the finding in M.C.O.P.No.36 of 2017 on the file of the Principal Sub Judge, Nagercoil, is set aside. That argument appears to be reasonable and acceptable also. There cannot be two contradictory findings in respect of the very same accident, even though these two matters were heard by two separate Tribunals. But, as noted above regarding the negligence aspect in both the matters, it was held that only the appellant was at fault.

8. Further, the learned counsel for the appellant would submit that he also sustained injuries, underwent surgery and that must be taken into account by this Court. But regarding the negligence aspect, I find that no contrary finding can be recorded by this Court, against the order passed in M.C.O.P.No.36 of 2017 on the file of the Principal Sub Judge, Nagercoil. So to know whether any personal accident coverage is available to the claimant, the insurance certificate was called for and also produced by



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the appellant, wherein, we can see that basic third party premium alone was paid. Therefore, there is no personal accident coverage for the rider.

So the appellant is not entitled for any compensation even in the category of personal accident coverage. The appeal fails.

9. Accordingly, this civil miscellaneous petition stands dismissed.

No costs.

28.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The II Additional Sub Judge, Motor Accident Claims Tribunal,
Nagercoil.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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