



C.M.A.(MD).No.12 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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1. Minor Ravi

2. Krishnammal

3. Petchimuthu

... Appellants/Petitioners 2 to 4

(Minor 1st appellant represented
through his grandfather/3rd appellant)

-vs-

1. M.Kalaiselvi

... 1st Respondent/1st Petitioner

2. A.Mervin

3. G.Ravikumar

... Respondents 2 and 3/
Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the judgment and decree made in M.C.O.P.No.262 of 2011 on the file of the Motor Accident Claims Tribunal-cum- Principal Sub Court, Tenkasi, dated 12.03.2018.

For Appellants : Mrs.K.Abiya

For R-2 : Mr.M.Sathiamoorthy

For R-1 and R-3 : No appearance



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the award passed in M.C.O.P.No.262 of 2011 on the file of the Motor Accident Claims Tribunal-cum-Principal Sub Court, Tenkasi, primarily challenging the exoneration of the second respondent.

2. When the deceased was riding a two wheeler on 13.11.2010, a Santro Car owned and driven by the second respondent/first respondent came from the opposite direction in a rash and negligent manner and dashed against the two wheeler. In the said accident, the deceased has sustained grievous injuries and later, he passed away.

3. The second respondent/first respondent had filed a counter contending that he is not the owner of the Santro Car, but he was only a driver. He had further pointed out that the owner of the Santro Car is one Ravikumar. Based upon the counter filed by the first respondent, G.Ravikumar was impleaded as the second respondent in the claim petition.



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4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the first respondent, namely, A.Mervin, who is the driver of the Santro Car was responsible for the accident. However, at the time of passing of the award, the liability was mulcted only upon the owner of the vehicle, namely, G.Ravikumar. Challenging the exoneration of the driver of the Santro Car, namely, the first respondent in the claim petition, the present appeal has been filed by the claimants.

5. According to the learned counsel appearing for the appellants/claimants, when the second respondent/first respondent/driver of the Santro Car has been held to be responsible for the accident, the award should have been passed as against the respondents 2 and 3/ respondents 1 and 2 as jointly and severally. The Tribunal has not chosen to pass joint and several award as against the respondents 2 and 3/respondents 1 and 2. Hence, he had prayed for setting aside the award to the said extent and to mulct joint and several liability as against the respondents 2 and 3/respondents 1 and 2, who are the driver and the owner of the Santro Car.



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6. Per contra, the learned counsel appearing for the second respondent/ first respondent relied upon Ex.P2- Accident Register to contend that the same is not in favour of the claimants. He further contended that an award cannot be passed as against the driver and only the owner is responsible for any liability on the part of the driver. Hence, he prayed for sustaining the award passed as against the owner of the vehicle.

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

8. In the claim petition, the claimants have specifically contended that the second respondent/first respondent, namely, A.Mervin, is the owner cum driver of the Santro Car at the time of accident. The Said A.Mervin, has filed a counter contending that he is only a driver at the time of accident and not the owner of the vehicle. The second respondent/first respondent had further contended in the counter that one Ravikumar is the owner of the vehicle. Therefore, it is clear that the second respondent/first respondent has admitted in his counter that he is the driver of the offending vehicle at the time of accident.



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9. In such circumstances, the Tribunal was not right in mulcting the entire liability upon the owner of the vehicle alone. Only if the driver is found to be negligent, as a consequence, namely, on the principles of vicarious liability, the owner becomes liable to pay the compensation. Section 168 of the Motor Vehicle Act 1988 empowers the Claims Tribunal to pass an award as against the insurer or owner or driver of the vehicle involved in the accident or against any of them. Therefore, after exonerating the driver of the offending vehicle, the owner cannot be held liable. In such circumstances, the Tribunal had erred in not passing an award of joint and several liability as against respondents 1 and 2 in the claim petition.

10. In view of the above said facts, the award of the Tribunal in exonerating the first respondent is hereby set aside and the award is passed that both the respondents in the claim petition are jointly and severally liable to satisfy the award amount.



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

20.06.2024

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

1. The Motor Accident Claims Tribunal-cum- Principal Sub Court,
Tenkasi,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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