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CMA.No.494 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.494 of 2023

Senthil

... Appellant

Vs.

1.K.Udhayakumar

(Notice to R1 may be dispensed with for the time being and separate petition has been filed for the same)

2.The New India Assurance Company Limited,
Rep. By its Manager, Amman Complex, 1st Floor,
EVN Road, Erode.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, pleaded to set aside the judgment and decree dated 25.09.2018 passed in MCOP.No.482 of 2016 on the file of Motor Accidents Claims Tribunal cum IV Additional District Judge, Erode District, Bhavani.

For appellant : Mr.C.Kulanthaivel
For Respondents : Mr.R.Sivakumar for R2

JUDGMENT



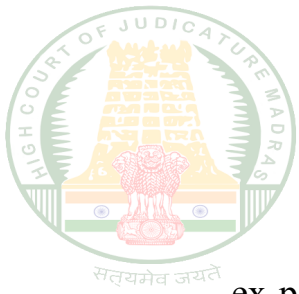
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The Civil Miscellaneous Appeal is filed challenging the order passed by the Motor Accident Claims Tribunal, dismissing the claim petition on the ground that the appellant himself is the tort-feasor.

2. The appellant herein filed a claim petition in MCOP.No.482 of 2016, seeking compensation of Rs.10,00,000/-. It was his case that on 26.05.2016, he was travelling as a passenger in a tourist van bearing registration No.TN-36-AT-1656 belonging to the first respondent insured with the second respondent. It was claimed by the appellant that the van was driven by its driver in a rash and negligent manner without following traffic rules, as a result of which, the vehicle got capsized. The appellant/claimant sustained simple and grievous injuries all over the body. Therefore, the above said claim petition was filed seeking compensation.

3. The first respondent/owner of the vehicle remained

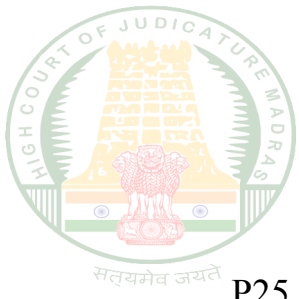


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ex-parte and the claim was resisted by the second respondent/Insurance company by denying the manner of accident as described in the claim petition. It was the specific case of the Insurance Company before the Tribunal that the claimant himself was driver of the van belonging to the first respondent at the time of accident, he being a tort-feasor is not entitled to claim any compensation.

4. Before the Tribunal, the main original petition filed by the claimant herein was enquired along with two motor claims Original Petitions namely M.C.O.P.Nos.460 and 528 of 2016. It was claimed by the 2nd respondent that the capsized van was driven by the appellant/claimant. The claimant in MCOP.No.460 of 2016 was examined as PW.1, the appellant/claimant in instant MCOP.No.482 of 2016 was examined as PW.2. The claimant in other MCOP.No.528 of 2016 was examined as PW.3, two other witnesses on behalf of the claimants were examined as PW4 and PW5. On behalf of the respondents, Superintendent of RTO Office was examined as RW.1, the second respondent/Insurance Company was examined as RW.2. On behalf of the claimant twenty five documents were marked Exs.P1 to



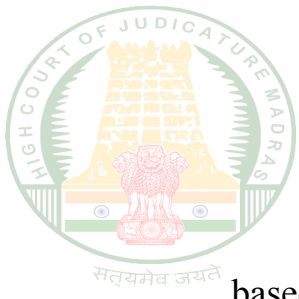
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P25. On behalf of the respondents, six documents were marked as Exs.R1 to R6, apart from these documents five other documents were marked as Ex.X1 to Ex.X4A. The disability certificate issued by the medical board were marked as Ex.C1 and C2. The Tribunal came to the conclusion that the appellant/claimant was driving the capsized vehicle at the time of accident and therefore, the claimant is not entitled to maintain the claim petition before the Tribunal under Section 166 of Motor Vehicle Act and consequently dismissed the claim petition. Aggrieved by the same, the appellant has come before this Court by way of this appeal.

5. The learned counsel appearing for the appellant would submit that at the time of accident the claimant was only a passenger in tourist van and the van was driven by one Vijaya Kumar. The Tribunal without taking into consideration the evidence on record properly, came to the conclusion, the appellant/claimant was tort-feasor and dismissed the claim petition.

6. The learned counsel appearing for the second respondent/Insurance Company by taking this Court to the various findings of the Tribunal submitted that the findings of the Tribunal were

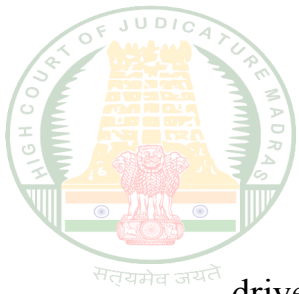


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based on proper application of evidence available on record, hence the same need not be interfered with.

7. The PW.1 was claimant in other claim petition, she deposed that she was travelling in a capsized van and the van was driven by one Vijayakumar herein. EX.P1 is the FIR and perusal of the same would suggest that the same has not been registered against the appellant. However in body of FIR, appellant name was mentioned as driver of vehicle. Ex.P4 is the Motor Vehicle Inspector's Report. A perusal of the same would suggest that in Column No.6, related to name and addresses of driver, the appellant's name was mentioned. Taking into consideration, documentary evidence namely the FIR as Ex.P1; Ex.P4-Motor Vehicle Inspector's report, the Tribunal came to the conclusion that at the time of accident, the vehicle was driven by appellant herein. Though claimants in other original petition, in order to support the case of the appellant herein, in their evidence had stated that vehicle was driven by one Vijayakumar, the documentary evidence available on record is otherwise. Therefore, the conclusion reached by the Tribunal that at the time of accident, the capsized vehicle was



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driven by the appellant is based on proper appreciation of evidence.

Once the Tribunal comes to the conclusion that the vehicle was driven by the appellant herein in a rash and negligent manner and he himself is a tort-feasor, the claim petition filed by the appellant under Section 166 of Motor Vehicle Act is not at all maintainable.

8. Accordingly, I do not find any reason to interfere with the award passed by the Tribunal and consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

27.02.2025

Index: Yes/No
Internet: Yes/No
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To
1. The Motor Accident Claims Tribunal,
IV Additional District Judge, Erode District, Bhavani.



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2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.
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