

C.M.A.(MD)No.888 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.888 of 2019

M.Selvakumar

... Appellant

Vs.

1.P.S.Palaniappan

2.The Manager,
New India Assurance Company Limited,
Main Road, Dindigul.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.127 of 2015 on the file of the learned Motor Vehicle Accident Claim Tribunal cum Chief Judicial Magistrate, Dindigul, dated 13.07.2018.

For Appellant : Mr.C.M.Arumugam

For 2nd Respondent : Mr.B.Rajesh Saravanan

For 1st Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the award passed by the learned Motor



C.M.A.(MD)No.888 of 2019

Accident Claim Tribunal (Chief Judicial Judge), Dindigul, in M.C.O.P.No.127

of 2015 dated 13.07.2018.

2.The factual matrix of the present case, briefly stated, are as under:-

The appellant travelled in the bus bearing Registration No.TN-63-AB-3601, belonging to the first respondent in Dindigul – Kannivadi route, at 10.00 a.m. While the said bus was travelling in Dindigul - Palani main road, while nearing the Tasmac shop at Palani bypass overbridge, the appellant, who was travelling in the aforesaid bus had fell down and sustained fracture in his left thigh and injuries across his body and was given first aid at SS Hospital, Dindigul, from where he was referred to Ganga Medical Hospital, at Coimbatore, for further treatment. He took treatment for 22 days as in patient and thereafter, was discharged. A First Information Report in Crime No.236 of 2015 was registered under Sections 279 and 337 of IPC by Thadikombu Police Station, on the complaint made by the petitioner's father, namely Maruthamuthu, with respect to the accident. Later, the appellant had filed the claim petition in M.C.O.P.No.127 of 2015.

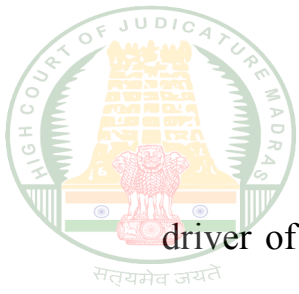
3.One witness was examined and 8 documents were marked on the side of the appellant/claimant. Two witnesses were examined and no document was



C.M.A.(MD)No.888 of 2019

marked on the side of the second respondent insurance company. The learned Tribunal has allowed the claim petition, by fixing no fault liability on the appellant and awarded a compensation of Rs.25,000/- to be given by the second respondent. Challenging the same, this Civil Miscellaneous Appeal is filed.

4.The learned counsel appearing for the appellant submitted that the First Information Report was registered on the information of the appellant's father himself. Though no accused was arrayed in the FIR, on the basis of the information given by the Conductor of the bus, in which the appellant had travelled, the appellant's father had given a complaint on the basis of which, the First Information Report has been registered. The details of the FIR would disclose that the appellant had slipped down, while travelling in the footboard. The learned Tribunal has proceeded on the basis of the FIR without taking into account that the accident had happened only because of the rash and negligent driving of the bus driver. Though the appellant was serving as Conductor in the same transport company owned by the first respondent, on the date of the said accident, the appellant was travelling in another bus belonging to the first respondent. Though the appellant had travelled in the footboard, the accident happened only due to the rash and negligence of the driver concerned. However, the learned Tribunal without fixing contributory negligence on the



C.M.A.(MD)No.888 of 2019

driver of the bus as well as the appellant, had proceeded to conclude that the proceedings as no fault liability case and awarded a meagre compensation of Rs.35,000/-. The said exercise has been done by the learned Tribunal, only on the basis of the First Information Report, which was registered on the information of the appellant's father, who was not an eyewitness, on the basis of the information given by the Conductor of the bus, which was involved in the accident.

5.Relying upon the order passed by this Court in C.M.A.No.1632 of 2019 dated 04.03.2009, in which this Court has held that FIR is not substantive or conclusive proof of negligence. The learned counsel insisted that the learned Tribunal ought not to have proceeded exclusively on the basis of the First Information report. He further relied upon the order passed by this Court in C.M.A.No.2147 of 2019 dated 09.04.2019, in which, this Court had held in similar lines that it is well settled that the contents of FIR cannot be conclusive proof of negligence.

6.For the aspect of contributory negligence, he relied upon paragraph no. 13 of the judgment of the Hon'ble Apex Court of India in the case of ***K.Anusha and others v. Regional Manager, Shriram General Insurance Company Ltd.,***



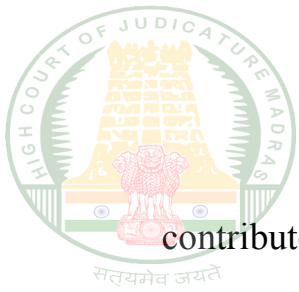
C.M.A.(MD)No.888 of 2019

reported in **CDJ 2021 SC 1185**, and the same is extracted as follows:-

WEB COPY

“13. Therefore, the entire reasoning of the High Court on Issue No.1 is riddled with inherent contradictions. To establish Contributory Negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. In Pramodkumar Rasikbhai v. Karmasey Kunvargi Tak and others, 2002 (3) CTC 633 (SC): 2002 (6) SCC 455, this Court quoted a decision of the High Court of Australia in Astley v. Austrust Ltd., 1999 (73) ALJR 403, to hold that”....where, by his negligence, one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to Contributory Negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty”. In fact, the statement of law in Swadling v. Cooper, 1931 AC 1, that “.... the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence.....”, was also quoted with approval by this Court. Therefore, we are compelled to reverse the finding of the Tribunal and the High Court on the question of Contributory Negligence.”

7. Relying upon the said judgment, the learned counsel categorically contended that when one party places another in a situation of danger, obviously contributory negligence should be fixed. However, in this case, though the driver of the bus had put the appellant in a condition of danger by driving in the rash and negligent manner, the learned Tribunal failed to fix



C.M.A.(MD)No.888 of 2019

contributory negligence both on the driver as well as the appellant and had proceeded to fix no fault liability. On the basis of which, a meagre amount of Rs.25,000/-, has been awarded as compensation and hence, the appellant was entitled for enhancement and accordingly, pressed for allowing the Appeal.

8.The learned counsel appearing for the second respondent insurance company submitted that this is not a case, which has been tried and concluded by the learned Tribunal only exclusively, on the basis of the First Information Report. But the contents of the FIR has been admitted and acknowledged by the appellant himself at the time of cross examination before the learned Tribunal. At the time of cross examination, the appellant had admitted that while he was travelling in the bus bearing Registration No.TN-63-AB-3601, he travelled in the footboard in the front side of the bus and while the bus was nearing the Tasmac shop, he slipped and fell down. He also admitted that as a Conductor, he is well aware that the passenger should not travel in foot board. Further in the FIR, the defacto complainant had claimed that he had given the complaint only on the basis of information received from the son, i.e., the appellant at the time, when the defacto complainant visited the appellant at S.S. Hospital. Hence, in view of the categorical admission made by the appellant before the learned Tribunal, the learned Tribunal had proceeded to fix no fault liability



C.M.A.(MD)No.888 of 2019

and had awarded a fair compensation and that need not be interfered.

WEB COPY

9.Heard the learned counsel for the appellant, the learned counsel for the second respondent and carefully perused the materials available on record.

10.Though the learned counsel for the appellant categorically submitted that no fault liability, ought not to have fixed on the appellant without noticing the fact that the driver of the bus had driven the rash and negligent manner and a contributory negligence should have been fixed by the learned Tribunal and should have awarded a fair compensation.

11.It can be understood from the materials available on record that the appellant had not taken any steps to examine any other witnesses. More particularly, eye witness to substantiate his claim that the accident had happened also because of the rash and negligent driving of the driver. Other than the First Information Report and the medical bills, no documents to substantiate the appellant's claim has been marked on his side.

12.In view of the same, I am of the considered view that the argument of the learned counsel for the appellant that the contributory negligence ought to



C.M.A.(MD)No.888 of 2019

have been fixed by the learned Tribunal for a footboard passenger, who had admitted that in the First Information report that the information given by his father was only on the basis of his narration to his father that he had slipped down from the bus and had fallen down and sustained injuries, is not acceptable. Hence, I conclude that the Appeal is not sustainable. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

13.The appellant/claimant is entitled to the award amount with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after deducting any amount received by them earlier. The appellant/claimant is not entitled for interest for the default period, if there is any. There shall be no order as to costs.

14.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



WEB COPY



C.M.A.(MD)No.888 of 2019

To

- 1.The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.888 of 2019

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.888 of 2019

14.02.2025