

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A. No.412 of 2007
and Cros.Obj.No.97 of 2010

C.M.A.No.412 of 2007

1. Durairaj
- 2.Pushpam

... Appellants/
Petitioners

Versus

1. Ramaiah
2. The Branch Manager
The Oriental Insurance Company Ltd.
No.12-A, PLA Building Company Ltd.
Coval Road, Karur - 639 002.

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.57 of 2002 dated 28.01.2003, on the file of the Motor Accidents Claims Tribunal / learned Principal District Judge, Perambalur.

Cros. Obj.No.97 of 2010
Ramaiah

... Cross Objector/
1st Respondent

Versus

- 1.Durairaj
- 2.Pushpam
- 3.The Branch Manager
The Oriental Insurance Company Ltd.
No.12-A, PLA Building Company Ltd.
Coval Road, Karur - 639 002.

... Respondents/Appellants
& 2nd Respondents

Prayer:

This Cross Objection is filed under Order 41, Rule 22 of the Code of Civil Procedure, against the Judgment and Decree dated 28.01.2003 made in M.C.O.P.No.57 of 2002 on the file of the Motor Accidents Claims Tribunal / learned Principal District Judge, Perambalur.

For Appellants in C.M.A and : Mrs.T.Sridevi for

Respondents in Cros.Obj Mr.A.Saravanan

For Respondents in C.M.A. and : Mr.R.Singaravelan,
Cros. Objectors in Cros. Obj Senior Counsel for
Mr.V.S.Jagadeesan (for R1)
Mr.R.Sivakumar (for R2)

COMMON JUDGMENT

The appellants who are the claimants have filed this appeal against the award of Rs.50,000/- granted by the Tribunal for enhancement of award amount.

2. It is the case of the appellant is that one Rengarajan was residing at Adaikkampatti Village, Kunnam Taluk, Perambalur District along with his parents. At that time of accident he was a tractor cleaner which was involved in the accident. On 02.10.2001 morning the Mahindra Tractor bearing Registration No.TN-45/2383 was taken up to the workshop at Turaiyur for the minor repair work by the driver of the vehicle from Adaikkampatti village. At that time of Accident, the deceased Rengarajan was sitting in the tractor on the right side of the driver and travelled along with him. At about 7.30 a.m on 02.10.2001 when the tractor was near about one tomb in Adaikkampatti to Nagalapuram Road, the driver of the vehicle drove in a rash and negligent manner, without applying his mind ascend the vehicle in the left side stone-wall. Due to that rash and negligent driving of the vehicle, the vehicle was upset suddenly on its right side on the road. When the vehicle was upset on the road, the deceased Rengarasu @ Rengarajan was fallen down on the road and the vehicle was squeeze head and body of the deceased. Due to the impact of the accident, the said Rengarasu @ Rengarajan was died on the spot. Therefore, the legal heirs (father and mother) of the deceased filed a petition in M.C.O.P.No.57 of 2002 before the Motor Accidents Claims Tribunal / learned Principal District Judge, Perambalur seeking compensation of Rs.3,00,000/- with interest at the rate of 18 % per annum.

3. The respondent Insurance company has filed counter statement by denying the entire averments made in the manner of the accident took place on 02.10.2001. When the matter was taken up by the Tribunal on 28.01.2003, the first respondent/owner of the vehicle has not appeared and hence exparte order was passed in favour of the appellants/claimants by directing the first respondent/ Cross objector herein/owner of the vehicle to pay a sum of Rs.50,000/- with interest at the rate of 9% per annum and also directed both the appellants to get the award amount of Rs.25,000/- each.

4. Challenging the said award, the appellants/claimants preferred this present appeal for enhancement of the compensation amount.

5. While pendency of the appeal in C.M.A.No.412 of 2007, the first respondent/owner of the vehicle filed a Cross Objection in Cros. Obj. No.97 of 2010 seeking a prayer to set aside the exparte order made in MC.O.P.No.57 of 2002 dated 28.01.2003.

6. It is the case of the Cross Objector in the Cross Objection petition that he was not appeared before the Tribunal on the date of exparte order was passed and hence the Tribunal fixed liability against the Cross Objector/Owner of the vehicle without giving any opportunity to him.

7. Heard the learned counsel appearing on either side in both Civil Miscellaneous Appeal and Cross Objection and perused the materials available on record.

8. Admittedly, the Tribunal has fixed the liability on the first respondent/owner of the vehicle by directing him to pay a sum of Rs.50,000/- with interest at the rate of 9% per annum by exparte award. In fact, the first respondent in CMA/ owner of the vehicle has filed a Cross Objection in Cros.Obj.No.97 of 2010 to set aside the exparte award. But, without filing any set aside application the Cross Objector /owner of the vehicle has directly filed the Cross Objection petition on the only ground that the claimants themselves have filed the Civil Miscellaneous Appeal in C.M.A.No.412 of 2007 before this Court for enhancement of award amount. Hence, this Court cannot decide both the Civil Miscellaneous Appeal filed for enhancement of award amount as well as Cross Objection for setting aside the exparte decree dated 23.01.2003. Therefore, this Court is of the view that both the appellants/claimants and first respondent/Cross Objector/owner of the vehicle should go before the Tribunal and establish their case.

8. If the Tribunal will consider the case afresh, both the

claimants and the owner of the vehicle will be benefited and no prejudice would be caused to them.

9. In view of the above, without going into the merits of the case, I am inclined to pass the following order:

a) The Civil Miscellaneous Appeal in C.M.A.No.412 of 2007 filed by the claimants is dismissed.

b) The Cross Objection in Cros. Obj.No.97 of 2010 filed by the first respondent/Cross Objector/Owner of the Vehicle is allowed by setting aside the order passed by the Motor Accidents Claims Tribunal / learned Principal District Judge, Perambalur in M.C.O.P.No.57 of 2002 dated 28.01.2003.

c) The matter is remand back to the Tribunal for fresh consideration. The claimants as well as Cross Objector/Owner of the vehicle are directed to give their evidence and documents afresh. The Motor Accidents Claims Tribunal / learned Principal District Judge, Perambalur is directed to dispose of the case in M.C.O.P.No.57 of 2002 within a period of three months from the date of receipt of a copy of this order in accordance with law. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vum

To.

The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.17746
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.16481
+1cc to Mr.A.Saravanan, Advocate, S.R.No.16926

C.M.A.No.412 of 2007
and Cros.Obj.No.97 of 2010

PA(CO)
CS/03/10/2019