

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1068 of 2015

P.Selvam

.. Appellant/Petitioner

Vs.

1. B.Padmanathan

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli District.

3. T.Karthik

4. The Manager,
Shriram General Insurance Co. Ltd.,
VCTV Main Road,
Sathy Road,
Erode.

.. Respondents

(R1 and R3 were set exparte in the Trial Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.12.2014, made in M.C.O.P.No.654 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

For Appellant : Mr.R.Arundattan
for Mr.C.Munuswamy

For Respondents: Mr.K.J.Sivakumar (for R2)

No appearance (for R3)

No appearance (for R4)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 15.12.2014, made in M.C.O.P.No.654 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

2.The appellant-claimant filed M.C.O.P.No.654 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.08.2012.

3.According to the appellant, on 30.08.2012, at about 01.00 a.m while he was driving the Tempo Traveler, the 1st respondent drove the bus belonging to the 2nd respondent in a rash and negligent manner and dashed against the Tempo Traveler and caused accident. In the accident, the appellant suffered simple injuries. He underwent surgeries and suffered disability. He could not do the work as he was doing earlier. Based on the above averments, the appellant has filed the claim petition. The appellant is permanent driver of the 3rd respondent and has paid extra premium in the policy to cover the liability to pay compensation to the driver.

4(i).The 1st respondent remained exparte.

4(ii).The 2nd respondent filed counter statement and contended that the accident occurred only due to rash and negligent driving by the appellant and denied that accident occurred due to rash and negligent driving by the 1st respondent.

4(iii).The 3rd respondent filed counter statement and contended that the vehicle was insured with the 4th respondent. If any compensation is ordered, it is only the 4th respondent-Insurance Company who has to borne the same. The 3rd respondent after filing counter statement subsequently remained exparte.

4(iv).The 4th respondent in the counter statement has stated that accident occurred due to rash and negligent driving by the 1st respondent, driver of the bus belonging to the 2nd respondent and hence, the 2nd respondent alone is liable to pay compensation.

5. Before the Tribunal, the appellant examined himself as P.W.1, two others were examined as P.W.2 and P.W.4 and Doctor was examined as P.W.3 and marked 22 documents as Exs.P1 to P22. On the side of the respondents, one T.Jayaseelan was examined as R.W.1 and no documentary evidence was marked.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that both the drivers of the Tempo Traveler as well as bus belonging to the 2nd respondent are responsible for the accident and fixed 75% negligence on the part of the driver of the bus as he was driving the heavy vehicle and 25% on the appellant as he was driving the light vehicle and awarded compensation.

7. Challenging the portion of the award dated 15.12.2014, made in M.C.O.P.No.654 of 2013 fixing 25% negligence on the part of the appellant/driver of the Tempo Traveler and seeking to enhance the compensation awarded by the Tribunal, the appellant has come out with the present appeal.

8. Learned counsel appearing for the appellant submitted that to substantiate his claim that the accident occurred only due to rash and negligent driving by the 1st respondent, he has examined independent eye-witness as P.W.2. The Tribunal, without properly appreciating the evidence let in by the appellant, erroneously held that the appellant is also responsible for the accident. In any event, fixing 25% negligence on the part of the appellant is erroneous and the amounts awarded by the Tribunal is meager and prayed for setting aside the negligence fixed on the part of the appellant and for enhancement of the compensation.

9. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record. Though notice has been served on the 3rd and 4th respondents and their names are printed in the cause-list, there is no representation for them either in person or through counsel.

10. From the materials on record, it is seen that the accident has occurred in the place where bridge was being repaired. Due to the same, the four line road was restricted to two line road and vehicles were diverted into two-way lane. The accident has occurred in the lane where the appellant was driving his vehicle. When the 1st respondent drove the vehicle, accident occurred. The Tribunal considered this fact that road was narrow to second lane and held that had the appellant and 1st respondent driven the vehicles at a moderate speed, they could

have avoided the accident. Further, FIR was registered against the appellant and the complaint was given by the 1st respondent, the driver of the bus. There is nothing on record to show that the appellant produced or gave his objection for FIR being registered against him or whether he has given counter complaint. No eye-witness has given complaint against the driver of the bus. The evidence of the appellant as well as the evidence of P.W.2, eye-witness examined by the appellant were contrary to the contents of FIR. The Tribunal considering the above materials, held that both the appellant and 1st respondent are responsible for the accident and fixed negligence at the ratio of 75:25 on the part of the 1st respondent, driver of the bus and the appellant, driver of the Tempo Traveler respectively, based on the nature of vehicle driven by them. There is no error or perversity in the finding of the Tribunal warranting interference by this Court.

11.As far as the enhancement of compensation is concerned, the Tribunal has granted excessive compensation for disability and loss of earning capacity separately and amounts granted by the Tribunal under other heads are not meager. In view of the same, the appellant is not entitled for enhancement of compensation.

12.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.3,41,051/- along with interest and costs is confirmed. The 2nd respondent is directed to deposit their shares of the award amount along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.654 of 2013. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

gsa

To
The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

Copy to:

The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.C.Munusamy Advocate sr101274

C.M.A.No. 1068 of 2015

pa(co)
aa18/12/2020



WEB COPY