

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2019

Pronounced on : 02.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A. No. 2539 of 2011

N.Arumugam

... Appellant/Claimant

Versus

1. Ranganayakalu

2. P.Lakshmaiah

3. Oriental Insurance Company Ltd.,
Branch Office II
15-442-10-1, Mayveli complex,
Railway Feeder Road,
Ananthapur District, Andhra Pradesh.

... Respondents/Respondents

(2nd respondent was set-exparte
before the tribunal)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2002 made in M.A.C.T.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

For Appellant : Mrs.R.Gowri

For R3 : Mr.J.Chandran

JUDGMENT

The appellant/claimant has preferred this appeal, seeking enhancement of compensation award dated 28.03.2002 made in M.A.C.T.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

2. The appellant/claimant filed claim petition alleging that the petitioner is the owner of the van bearing registration No.TDB 8141 which was booked for Aarupadai Veedu tour by the Muruga devotees and the van along with two drivers and devotees were travelling on Dharmapuri to Krishnagiri towards Thiruthani. When the van was proceeding near Periapatti Ambika restaurant at about 6 a.m on 16.12.1992 driven by one Thangavelu of Nasiyanur, the lorry bearing registration No.AP-02/T-0072 being driven by the first respondent herein in a rash and negligent manner at a high speed from opposite side hit against the van. As a result, four persons died and others were sustained injuries and the van bearing No. TDB 8142 was smashed into pieces. The accident took place only due to the rash and negligent act of the first respondent herein, the driver of the lorry AP-02/T-0072. A case under sections 279,337,338 and 304 (A) I.P.C was registered against the first respondent by the Karimangalam Police in Cr.No.1166/92. Due to the accident all the parts of the van TDB 8141 were fully damaged and hence the same is kept at Erode. Due to this the petitioner spent thousands of rupee to move the damaged van from Periapatti to Erode. The petitioner also lost the income of the van from the date of accident.

3. Totally three claim petitions in MCOP.Nos.81 to 83 of 1993 were filed before the claims tribunal by different claimants pertaining to the aforesaid accident. This appeal is arising out of MCOP.No.81 of 1993, filed by the appellant/claimant before the Motor Accidents Claims Tribunal, seeking damage cost of the van. Not being satisfied with the compensation awarded towards the damage cost to the van of Rs.36,000/- the appellant/claimant has come forward with the present appeal seeking enhancement of compensation.

4. Before the Tribunal, in order to sustain the claim, the claimant himself was examined as PW.1 to PW3 and twenty one documents were marked as Exs.P1 to P21 on the side of the claimant. On the side of the respondents, neither oral nor documentary evidence was adduced.

5. Based upon the oral evidence of PW1 to PW3 who are injured and traveling in the van and also coupled with documentary evidence (viz.,) the Ex.P1- FIR, Ex.P2 - Motor Vehicle Inspector's report and Ex.P4-charge sheet, the Tribunal has held that the accident had taken place due to the rash and negligent driving of driver of the offending vehicle namely first respondent herein and the second respondent who is owner of the lorry and was insured with the third respondent and awarded compensation at Rs.36,000/-

6. The learned counsel for the appellant/owner of the damaged van, has drawn my attention to the Motor Vehicle Inspector's Report-Exs.P2 and Ex.P9 and Ex.P8 - the assessment made by the mechanic for repairing the damaged van at Rs.2,00,000/- and contended that during the cross examination the claim petitioner /appellant herein categorically admitted that due to the rash and negligent driving of the vehicle by the driver of the offending vehicle, namely first respondent herein, the van was totally damaged and became unfit to ply on road.

7. Taking in to consideration of the evidence of the claimant and in the absence of the any contra evidence let in by the owner of the offending vehicle or the insurance company and also taking into consideration the nature of the damages as would be seen from the Ex.P2 and Ex.P9 and also the fact that the vehicle has been now totally damaged and unfit for plying in the road and on entirety of the circumstances, this Court is of the view that in the interest of justice a sum of Rs.52,000/- can be awarded as compensation.

8. In the result the Civil Miscellaneous Appeal is allowed and the Judgment and Decree dated 28.03.2002 made in M.A.C.T.O.P.No.81 of 1993 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri is hereby modified and enhanced. The third respondent is liable to pay the compensation on behalf of the second respondent of total sum of Rs.52,000/- as compensation to the appellant/claimant, together with interest of 9% within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest. The appellant is directed to pay additional Court fee for the enhanced amount. The third respondent is directed to deposit the amount as determined in this appeal together with interest, after adjusting amount, if any, already deposited. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

av

To

1. The Motor Accident Claims Tribunal
-cum-Additional District Court, Dharmapuri.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

C.M.A. No. 2539 of 2011

ms (co)
nr 22/10/2019



WEB COPY