



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2808 of 2011

B.Shanthi

.. Appellant/Petitioner

Vs.

1.R.Mani (Given up)

2.Sembagounder

3.United India Insurance Company Limited,
S.R.S.Towers, 595, Mettur Main Road,
Bhavani - 638 301
Erode District

4.United India Insurance Company Limited,
No.3, Giriram Building Main Road,
Gobichettipalayam, Erode District
(Given up)

.. Respondents/Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.07.2010 made in MC.O.P.No.43 of 2008 on the file of the Motor Accident Claims Tribunal (Sub-Court, Bhavani)

For Appellant	: Mr.C.Kulanthaivel
For R1&R4	: Given up
For R2	: No appearance
For R3	: Mr.C.Paranthaman

JUDGMENT

The claimant is the appellant herein. The claimant has preferred MC.O.P.No.43 of 2008 claiming compensation for damage of vehicle happened in the road accident. As per the claim petition, the respondent has parked his tractor in the middle of the road without signal and thereby, the accident has taken place and marked necessary police documents. Based upon the same, the claimant has preferred the claim petition.

2. The averments made in the claim petition in brief are as follows:-



(i) On 02.11.2007 at about 10.45 p.m., the Tractor vehicle bearing Registration No.TN 36 K 7924 which was parked by the 1st respondent at Gobichettipalayam to Erode main road without signal lamp in a negligent and dangerous manner to the user of the road, on the side of the road at the time of the mini door vehicle bearing Registration No.TN 36 K 0632 belonging to the claimant hit the parked vehicle.

(ii) Due to the accident, the mini door vehicle was damaged. The 1st respondent is sole responsible for the said accident, by parking the vehicle on the road at night without giving signal lamp, negligently and dangerously. Due to the accident, the mini door vehicle heavily damaged. The claimant spent a sum of Rs.65,000/- towards the damage cabin and engine. The repairing work was done at Jeyaram motors, Perundurai road at Erode. The repairing work was lasting more than three months at the workshop i.e., Jayaram Motors, Erode. The claimant lost the income of the vehicle to the tune of Rs.15,000/- per month exciding all expenses i.e., driver batta, fuel, depreciation. Hence, the claimant claiming a total compensation of Rs.1,00,000/- from the respondents. Having not satisfied with the award of compensation by the Tribunal, the claimant has preferred this appeal.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.37,000/- with interest at 7.5% per annum.

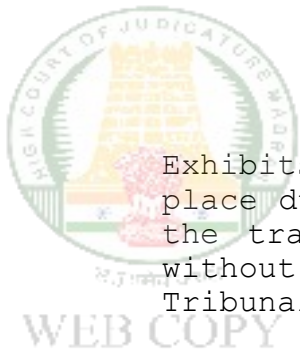
4. Heard both sides and perused the materials on record.

5. During the Trial, the claimant/appellant was examined himself as P.W.1 and his authorized the surveyor was examined as P.W.2 and Exhibits P1 to P15 were marked. On behalf of the respondent side, Exhibits R1 and R2 were marked.

6. P.W.2 surveyor who has assessed the damaged vehicle and accordingly, he has filed the report is marked as Exhibit P14 before the Tribunal. Based upon the same, the learned counsel for the claimant would submit that as per Exhibit P14, the damaged vehicle is assessed at Rs.47,482/- besides tinkering and painting, loss of income, labour charges and miscellaneous spare parts has to be given.

7. The learned counsel for the Insurance Company would submit that the claimant could have also claimed damaged vehicle from their own Insurance Company. Besides, submitted that compensation on the head of mental agony does not arise in respect of damage to vehicle.

8. Taking into consideration of the evidence of P.W.1 and



Exhibits P1 to P10, this Court finds that the accident has taken place due to the rash and negligent on the part of the driver of the tractor in parking the vehicle in the middle of the road without any indicator and a similar finding is arrived by the Tribunal is hereby confirmed.

9. On the point of quantum, both the parties are heard.

10. Taking into consideration of Exhibit P14-surveyor report and also in the absence of any surveyor report on behalf of the second respondent-Insurance Company before the Tribunal. After going through the damages and details of the surveyor report and version as spoken to by the R.W.1, this Court finds that a sum of Rs.47,000/- could be awarded as 'damages to cable assembly charges' and for 'tinkering and painting' a sum of Rs.10,000/-, for the 'loss of income' Rs.12,000/- is awarded and for 'labour charges and for 'miscellaneous charges' are toto rounded of Rs.10,000/-.

11. However, the compensation awarded by the Tribunal for the mental agony is hereby stand vacated. Hence, total compensation is hereby enhanced to Rs.89,000/- from Rs.37,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
cable set charges	Rs. 20,000/-	---
Tinkering and Painting charges	Rs. 5,000/-	Rs. 10,000/-
Labour charges	Rs. 5,000/-	Rs. 10,000/-
Pain and sufferings	Rs. 5,000/-	----
Loss of income	---	Rs. 12,000/-
Damage to cable assembly charges	---	Rs. 47,000/-
Miscellaneous Parts charges	Rs. 2,000/-	Rs. 10,000/-
Total	Rs. 37,000/-	Rs. 89,000/-

11. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited the amount awarded by the Tribunal and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall



accordingly be calculated for payment.

12. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Sub-Court, Bhavani)
2. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.20840
+2cc to Mr.C.Paranthaman, Advocate, S.R.No.20238

C.M.A.No.2808 of 2011

CNR(CO)
CS/15/10/2019