

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1226 of 2003

T.Srinivasan

... Appellant/Petitioner

Vs.

1.Govt. of Andhra Pradesh,
rep. by Sub Divisional Prohibition &
Excise Officer, Tirupati, A.P.State.

2.Govt. of Andhra Pradesh,
rep. by the Collector,
Chittur, A.P.State.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 22.08.2002 made in M.C.O.P.No.2318 of 1998 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes at Chennai.

For Appellant : Mr.J.Mahalingam

For Respondents : M/s. S.Jaganathan
Government Pleader (Civil Suit)

JUDGEMENT

The case of the appellant is that on 08.01.1997 around 10.15 am, the claimant was travelling by his scooter bearing Registration No. TN22-A-7216 at Anna Salai from North to South near Maraimalai Adigal Bridge, while the Jeep TNA - 630 driven by its driver in a rash and negligent manner had come in a high speed and dashed against the appellant from behind and caused grievous injuries to appellant. He submitted that due to the said accident, he sustained injuries in head, chest and abdomen and other serious multiple injuries all over the body and the vehicle was also damaged. He took treatment in Saidapet Government Hospital and then at Government Royapettah Hospital, Chennai. He was admitted there from 08.01.1997 to 14.01.1997 and he had continued treatment as an out-patient also. The vehicle was standing in the name of one P.Rajashekhar Rao represented by Sub-Divisional Prohibition and Excise Officer,

Tirupati, A.P. State.

2. A counter was filed by the respondents viz. the Government of Andhra Pradesh represented by Sub-Divisional Prohibition and Excise Officer, Tirupati, A.P. State and Collector, Chittoor, A.P. State before the Court below, denying the said mode of accident and stating that the claim itself is not maintainable, as they are not the owners of the jeep bearing registration No.TNA - 630, which has been alleged to have been involved in the accident on 08.01.1997. As they are not the owners of the vehicle, they are not liable to pay any compensation to the claimant/appellant.

3. The Court below, had come to a conclusion that the claimant is entitled to receive a sum of Rs.19,500/- and awarded a sum of Rs.19,500/- with 9% interest which has to be paid within eight weeks. As against the same, the appellant has come up with this appeal.

4. Learned counsel for the appellant had submitted that the appellant sustained serious injuries and claimed a sum of Rs.1,50,000/- restricted to Rs.75,000/-. However, Tribunal has awarded Rs.19,500/- which is a very meager amount, hence seeks to set aside the order passed by the Tribunal and the same is tabulated below:-

Pain and sufferings	Rs.4,000/-
Transportation and Medical Expenses	Rs.250/-
Nutrition	Rs.250/-
Future transportation charges and pain & sufferings	Rs.5,000/-
Permanent Disability	Rs.10,000/-

5. The case of the respondents was that on 20.10.1995 at 4.30 pm, raids were conducted by the Prohibition & Excise Officer near Govindarajulu temple, Tirupati and they found the jeep bearing registration No.TNA - 630 with the illicit liquor bottles when a prohibition was promulgated in the State of Andhra Pradesh and hence, the said vehicle was seized and the same was handed over to the Deputy Commissioner of Prohibition and Excise, Anantapur, who had in turn handed over the same to the Assistant Commissioner of Prohibition and Excise, Anantapur, for safe custody. The said vehicle was in the safe custody of the Government of Andhra Pradesh and till date, the same is lying down which is not pliable. It is absolutely false to state that the said vehicle which is under their custody was involved in the accident dated 08.01.1997 at 10.15 am at Annasalai, Chennai, as it is not being used and lying in condemned condition and is not roadworthy. Therefore, the

allegations that the said vehicle was driven by P.Rajashekhar Rao in a rash and negligent manner and causing the accident, does not arise. He also submitted that the claim petition is not maintainable.

6. Heard Mr.J.Mahalingam, learned counsel for the appellant and Mr.S.Jaganathan, learned Government Pleader appearing for the State of Andhra Pradesh/respondents and perused the documents placed on record.

7. On the side of the claimant, Ex.P1 to P6 were marked and PW1 to PW3 were examined as witnesses. On the side of the respondents, one document viz., a charge sheet was filed and one person namely P.Rajashekar, was examined.

8. On going through the materials available on record, this Court is of the view, that as per Ex.P1 F.I.R., the accident has occurred near Saidapet Maraimalai Adigal Bridge by the said Jeep bearing No.TN- 630 and the same was registered against the said vehicle and PW2 was the eye witness to the said accident. Due to the said accident, the injured sustained serious injuries, who was a pedestrian. On the contrary, RW1, who is an officer in the first respondent, in his evidences submitted that from 1995 to 02.09.1995, he had worked in the first respondent office and the vehicle does not belong to Andhra Pradesh Government and on the date of accident, the vehicle was in the custody of the Excise Wings Officer. On 05.08.1998, Assistant Commissioner sent a letter No.RCP4/311/95 stating that the vehicle is under his custody and it was not in a roadworthy condition. Again the same was enquired with R.T.O. of Madurai and from the said enquiry, it was found that the vehicle stands in the name of the Divisional Manager, L.I.C. of India, Madurai Division and he enquired with the said Manager and submitted that by letters dated 22.12.1995 and 11.01.1996 through assignment book, the vehicle was disposed of on 28.03.1984 itself and other than that he does not have any other particulars. The said vehicle was reassembled and the Tamil Nadu registration number was given and the same was seized by the government and stands in the name of the Government of Andhra Pradesh. From 25.10.1995, the vehicle stands in the custody of Sub Divisional Prohibition & Excise Officer, Tirupati, A.P.State and it is in a condemned condition and from that day onwards, the vehicle is in a non-pliable condition and it cannot cause any accident in Chennai, as it is in the campus of the Prohibition & Excise Office, Tirupati, A.P.State.

9. It is the further case of RW1 that there was no proper evidence to show that the said vehicle was reassembled and immediately, the said vehicle was given to the Police as soon as an F.I.R. was registered. When the accident has taken place on

08.01.1997, the complaint was given around 10.30 am within 15 minutes. The said Manager of L.I.C of India was not examined and there was no other documents other than the said document, Ex.R1, charge sheet marked by RW1 to show that something has been missing and there is no cogent evidence to prove that the said vehicle was in the custody of Sub Divisional Prohibition & Excise Officer, Tirupati, A.P.State and when the same was not proved, it is not clear that whether the said vehicle was in a pliable condition or in a condemned state. It is proved that the claimant had sustained injuries and he was admitted in hospital and sustained permanent disability and the Court below has awarded a sum of Rs.19,500/- as compensation with 9% interest in the year 2002. The charge sheet, Ex.R1 filed, would show that the vehicle involved has been seized by the officials of Prohibition & Excise Wing of Tirupati. During the said investigation, efforts were made to trace details of the said vehicle, as the accused has fixed the fictitious number by copying the same from the Tamil Nadu vehicle, the same was confessed by the accused. During further investigation, they visited Bangalore on 18.05.1996, to collect source of information with regard to the vendor of the liquor and they could not ascertain anything and other than that there was no other material to show that the vehicle was running with the bogus number, which was copied from the Tamil Nadu vehicle.

10. That being the case, no material has been produced by the concerned authority to show that the vehicle was seized and was not in a roadworthy condition. As the appellant had sustained injuries and the enquiry conducted by the authorities would show that the vehicle was in the custody of the Andhra Pradesh Government. In the absence of any valid materials other than the charge sheet, no other material was produced to show that the vehicle was in the roadworthy condition and if they have suspected that the said vehicle was having bogus number, they should have opted to inform the same, immediately to the concerned Police Station in Tamil Nadu but no other communication has been produced to show that they have informed the same to their counterpart in Chennai.

11. Admittedly, the respondents proved that the vehicle was seized by them in Tirupati and the vehicle was in the custody of the said persons. Whether it was in a good condition or condemned condition, was not being proved by any documentary evidence, hence, this Court, is of the view that the appeal has to be allowed in the case of the liability as well as the quantum. Andhra Pradesh Government has not proceeded further by filing any appeal and that shows that they have accepted the said liability. Regarding the quantum, it was established by the claimant that he was working as the proprietor of Dyana Refrigeration Service and was earning Rs.4,000/- per month.

Taking into consideration, Ex.P5, Disability Certificate, given by P.W.3, Dr., who had assessed 20% disability, this Court is inclined to award a sum of Rs.2,000/- per disability, hence [20% * 2,000] a sum of Rs.40,000/- is awarded towards 20% Disability instead of Rs.10,000/- awarded by the Tribunal, considering the nature of Injuries suffered by the claimant, he would not have gone towards for atleast 3 months [4,000/- X 3 = 12,000/-]. Accordingly, a sum of Rs.12,000/- is awarded towards loss of earning during the period of treatment. Further, Tribunal has awarded only meager amount towards pain & sufferings and no amount is awarded towards Transportation to Hospital; Extra Nourishment & loss of amenities, therefore, a sum of Rs.10,000/-; Rs.2,000/-; Rs.1,000/- & Rs.500/- is hereby awarded towards the said heads respectively. Further, on perusing Ex.P1 & Ex.P5, Discharge summons & Disability Certificate, it is clear that definitely a person would have accompanied the appellant to carry out his day today activities, accordingly, a sum of Rs.5,000/- is awarded towards Attendant Charges.

12. In such view of the matter, this Court is of the view that the award of Rs.70,500/- in total would meet the ends of justice. The said amount shall carry 7.5% interest per annum from the date of claim petition till the date of realization. The respondents are directed to deposit the enhanced amount to the credit of M.C.O.P No.2318 of 1998 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes at Chennai, along with interest and cost as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount, less the amount if any, already withdrawn by filing an appropriate application before the Court concerned. The breakup details of the restructured compensation would be thus :-

20% disability	40,000/-
Loss of income during the period of treatment	(4000*3) 12,000/-
Pain and suffering	10,000/-
Transport to hospital	2,000/-
Extra nourishment	1,000/-
Attendant charges	5,000/-
Loss of amenities	500/-
Total	Rs.70,500/-

No bill has been produced regarding the damage of scooter hence, no amount is awarded in respect of damage.

13. In the result, the present Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
IV Judge, Court of Small Causes, Chennai.

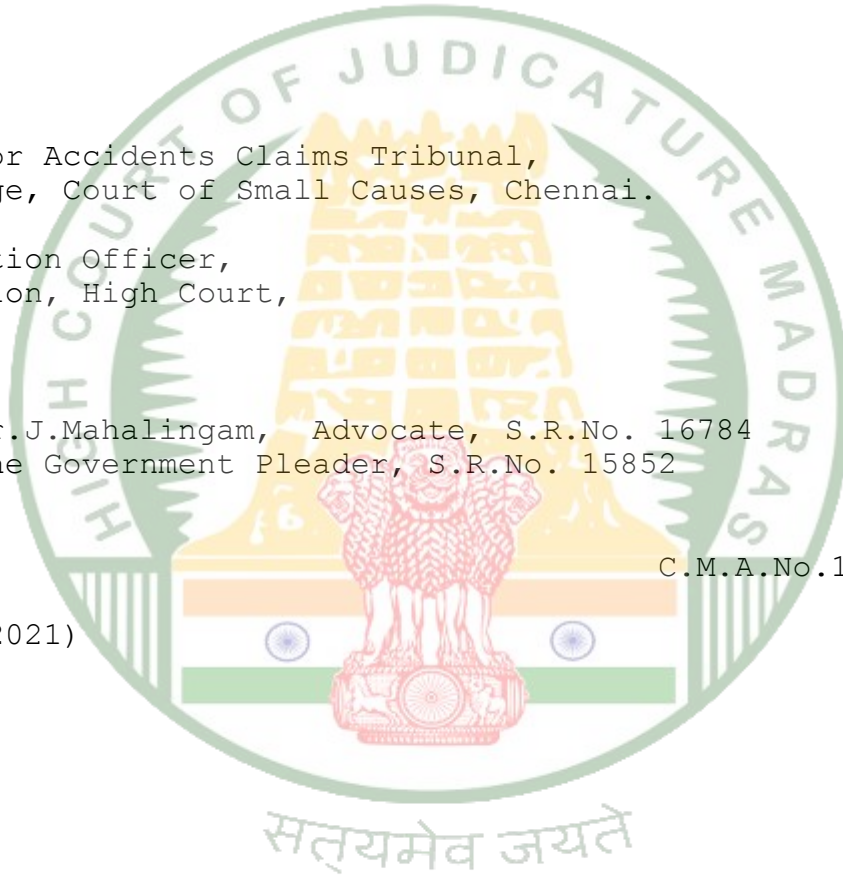
2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Mahalingam, Advocate, S.R.No. 16784

+1cc to the Government Pleader, S.R.No. 15852

C.M.A.No.1226 of 2003

BP (CO)
GN (22/06/2021)



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