

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1 of 2015

R.Mani

.. Appellant/Petitioner

Vs.

1.A.Jayakumar

2.S.Rangasamy Nadar

3.United India Insurance Co.Ltd.

Salem-1.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2007 made in M.C.O.P.No.1431 of 2000 on the file of Motor Accidents Claims Tribunal, I Additional District Judge, Erode.

For Appellant : Mr.Jagajothi for Mr.V.Ayyadurai

For R3 : Ms.I.Malar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition as against the 3rd respondent as well as for enhancement of compensation granted by the Tribunal in the award dated 10.07.2007 made in M.C.O.P.No.1431 of 2000 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Erode.

2.The appellant is claimant in M.C.O.P.No.1431 of 2000 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Erode. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.05.2000.

3. According to the appellant, on the date of accident i.e., on 05.05.2000 at about 2.00 a.m., while the appellant along with his wife and daughter were travelling in the lorry from Athur to Ulunthurpet, the 1st respondent/driver of the lorry belonging to the 2nd respondent drove the same in a rash and negligent manner, dashed on the road side mile stone and caused the accident. In the accident, the appellant sustained grievous injuries all over his body and therefore, he filed the above claim petition claiming compensation.

4. The respondents 1 and 2/driver and owner of the lorry respectively, remained exparte before the Tribunal.

5. The 3rd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the appellant travelled in the goods vehicle as gratuitous passenger, which is against the conditions of the insurance policy and therefore, the 3rd respondent is not liable to pay any compensation.

6. Before the Tribunal, the appellant examined himself as P.W.1 and one Dr. Kumar was examined as P.W.2 and marked six documents as Exs.P1 to P6. On the side of the respondents, one K.Nandakumar, staff of the 3rd respondent/Insurance Company was examined as R.W.1 and copy of insurance policy was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver of the lorry belonging to the 2nd respondent and directed both the respondents 1 & 2 to pay a sum of Rs.33,500/- as compensation to the appellant and dismissed the claim petition as against the 3rd respondent/Insurance Company.

8. Challenging the portion of the award dismissing the claim petition as against the 3rd respondent/Insurance Company as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant/claimant contended that the Tribunal erred in dismissing the claim petition against the 3rd respondent/Insurance Company. The Tribunal ought to have seen that the appellant travelled as owner of the goods and he was not a gratuitous passenger. The reason given by the Tribunal for dismissing the claim petition against the 3rd respondent/Insurance Company is erroneous. The compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award dismissing

the claim petition as against the 3rd respondent and for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellant travelled in the lorry as gratuitous passenger. In the claim petition itself, he has stated that he travelled along with his wife and daughter in the lorry. The Tribunal considered that the appellant travelled in the goods vehicle as gratuitous passenger and therefore the 3rd respondent/Insurance Company is not liable to pay compensation. At the time of accident, six persons travelled in the lorry by paying Rs.50/-. The Tribunal considering the evidence of the appellant and his admission that he has travelled in the lorry by paying Rs.50/-, rightly dismissed the claim petition against the 3rd respondent/Insurance Company and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent and perused all the materials available on record.

12. From the materials available on record, it is seen that the appellant in the claim petition has stated that he, his wife and daughter travelled in the lorry from Athur to Ulundhurpet main road at the time of accident. In the F.I.R. given by the appellant, he has stated that they travelled in the lorry by paying Rs.50/- each. In his cross-examination, the appellant has deposed that he travelled in the lorry along with his house hold articles as owner of the goods and at the time of accident, six persons travelled in the lorry, which is contrary to the averments made in the claim petition. Considering the improvements made by the appellant at the time of giving evidence, the Tribunal did not accept the evidence of the appellant and rejected the claim of the appellant that he travelled in the lorry as owner of the goods. The Tribunal considering the judgment of the Hon'ble Apex reported in 2005 ACJ 1801 (M.V. Jayadevappa vs. Oriental Fire and General Insurance Company Limited), wherein it has been held that the Insurance Company is not liable to pay compensation for gratuitous passenger travelled in the goods vehicle, dismissed the claim petition as against the 3rd respondent/Insurance Company. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

13. As far as quantum of compensation is concerned, the Tribunal after considering both oral and documentary evidence let in by the appellant, awarded compensation to him, which is not meagre and the same does not warrant any interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.33,500/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is confirmed. The respondents 1 and 2 are directed to deposit the entire amount awarded by the Tribunal along with interest and costs, 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, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj

To

1.The I Additional District Judge
The Motor Accident Claims Tribunal
Erode.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to M/s.V.Balamurugan, Advocate Sr.No. 3981

+1 cc to M/s.I.Malar, Advocate Sr.No. 4235

RK(CO)
RMP(06/05/2021)

C.M.A.No.1 of 2015

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