

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1728 of 2013

S.P.Thangavelu

... Appellant/Claimant

Vs.

1. Meena

2. New India Assurance Co., Ltd.,
Kumaran Shopping Complex,
Kumaran Road, Thirupur

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal, Rasipuram made in M.C.O.P.No.748 of 2008 dated 04.08.2011.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.P.G.Padmanabhan for R2
R1 - Served - Name Printed
- No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.04.2012 made in M.C.O.P.No.640 of 2009 on the file of Motor Accident Claims Tribunal (Additional District Court) Krishnagiri.

2. According to the appellant / claimant, on 14.02.2008, at about 5.30 a.m., the appellant's vehicle bearing regn. No.KA-01/AA-9955 (Lorry) was proceeding near Matlampatti, at extreme left side of the Kariyamangalam to Dharmapuri Main Road, at that time, the driver of the 1st respondent's vehicle bearing Regn.No.TN-558-H-5760 had driven the vehicle in a rash and negligent manner and dashed against the appellants vehicle. Due to which the vehicle sustained damages on body, cabin, chassis, steering box and engine of the vehicle. Thereafter, the vehicle was taken to the service shop and the repair work was carried out from 14.02.2008 to 14.03.2008 and that the appellant had paid nearly Rs.2,30,000/- for the expenses incurred to the vehicle. Since the 1st respondent is the owner of the vehicle

and the 2nd respondent is the insurer of the vehicle, the appellant has claimed a compensation of Rs.3,00,000/- against them.

3. Per contra, it is the case of the 2nd respondent / Insurance Company that on the alleged date of accident, the driver of the vehicle bearing Regn.No.TN 58H 5760 drove the vehicle with all due care, caution and slowly and it is the driver of the vehicle bearing Regn.No.KA 01 AA 9955 had driven the vehicle in a rash and negligent manner and had caused the accident. Therefore, no amount of liability can be fixed on the 2nd respondent. Further, the appellant had purchased the damaged parts of the vehicle for remodeling the vehicle and that it is the duty of the appellant to produce the bills of the spare parts separately, without doing so, the appellant has claimed Rs.3,00,000/-, which is a very high compensation.

4. The Tribunal after considering the pleadings, counter pleadings and the materials produced on either side has dismissed the claim petition filed by the appellant. Challenging the dismissal order passed by the Tribunal, the appellant / claimant has preferred this present appeal.

5. The learned counsel for the appellant contended that the Tribunal erred in assessing the depreciation value of the vehicle of the claimant after the accident by comparing with the vehicle of the 1st respondent and further erred in coming to the conclusion that the claimant had sold the vehicle after the accident more than the amount which was claimed as compensation, therefore, the claimant is not entitled to the compensation.

6. The learned counsel for the appellant submitted that the Tribunal ought to have properly assessed the loss of damages to the vehicle of the appellant by accepting the assessment of P.W.2 and Ex.A.10. That apart, the Tribunal failed to award proper and reasonable compensation and also failed to award proper interest in view of the current banking interest rate, therefore, pleaded to set aside the order passed by the Tribunal.

7. There is no representation on behalf of the 1st respondent before the trial court and therefore, she was set exparte. Though notice was served and name has been printed in the cause list, there is no representation for the 1st respondent either-in-person or through learned counsel.

8. The learned counsel for the 2nd respondent by way of filing a detailed counter before the Tribunal has submitted that the award passed by the tribunal does not require any interference in the hands of this Court.

9. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the materials available on record.

10. From the perusal of the order passed by the Tribunal, it is seen that the appellant was himself examined as P.W.1, Policy Surveyor was examined as P.W.2 and one Selvamurali, who is the eye witness to the accident was examined as P.W.3 and he has stated in his evidence that while he was travelling in the appellant's vehicle, the accident had happened and the same was only due to the rash and negligent driving of the driver of the vehicle bearing Regn. No.TN 58H 5760. With regard to the accident, FIR was registered in Crime No.206 of 2008 under Sections 279, 337 and 304(A) of IPC on the complaint given by Kaveri, driver of the lorry of the appellant, but, the said person was not examined.

11. Also, the Tribunal taking into account of Ex.P.3, Rough Sketch, Ex.P.4, Observation Mahazar and Inspection report of the two vehicles submitted by the Motor vehicle inspector, had rightly arrived at a conclusion that the accident had occurred only due to the rash and negligent driving of the 1st respondent's driver, which is perfectly reasonable.

12. It is pertinent to point out that in Ex.P.5, Insurance Policy, the depreciation of the 1st respondent's vehicle is mentioned as Rs.2,50,000/- . Ex.P.10, is the motor vehicle inspection report, which was submitted by one Ravichandran after inspecting the vehicle and he has given evidence supporting the same. Taking into account of the spare parts to be fixed for the vehicle, which was met with the accident and the damages caused to the vehicle, he has assessed the damages to the extent of Rs.1,18,050/- and thereby, the Tribunal fixed a sum of Rs.1,10,000/- for the damages caused to the vehicle. Though the appellant had claimed a sum of Rs.2,30,000/- towards the damages caused to the vehicle, taking shelter of the report given by the Motor Vehicle surveyor, Tribunal had fixed a sum of Rs.1,10,000/- towards the damages caused to the vehicle. That apart, the vehicle was in the service shop for a period of one month and at that time, the appellant had suffered loss of earning, hence the Tribunal fixed a sum of Rs.25,000/- towards loss of earning. Moreover, in order to tow the vehicle from the accident spot to the repair shop, a sum of Rs.5,000/- was fixed towards transportation charges and Rs.10,000/- was fixed towards mental agony.

13. However, the Tribunal by fixing the aforementioned compensation, has opined that the appellant has sold the vehicle for Rs.7,00,000/-, therefore, by deducting the written down value and the loss assessed by them as cited supra, the Tribunal

[Rs.7,00,000/- (-) Rs.2,50,000/- (Written Down Value, Rs.1,50,000/- (Loss assessed by the tribunal)] had come to the conclusion that the appellant had gained a profit for Rs.3,00,000/-, which in the considered opinion of this Court needs interference. Accordingly, the said finding is set aside and Rs.1,50,000/- has to be paid by the Insurance company.

14. Moreover, the Tribunal having been accepted that the negligence is only on the part of the driver of the vehicle of the 1st respondent, ought to have awarded a reasonable compensation, as fixed by them, by taking into account the evidences and the materials placed on record, but the Tribunal erred in dismissing the claim petition.

15. Also, the appellant has stated in his evidence that he had sold his vehicle for Rs.7,00,000/-. Further, the learned counsel for the appellant has also stated that the appellant has spent more amount than the amount fixed by the Insurance surveyor. This Court is fully in agreement with the said submission by taking note of the damages stated in the motor vehicle surveyor's report, viz., Ex.P.7, Inspection report, viz., Ex.P.2 and Ex.P.10, Damages assessed by the Motor Vehicle Inspector. Eventhough there are some depreciation value assessed by the Insurance companies, it cannot be forgotten that the appellant's vehicle was in a good working condition before the accident and he was eeking his livelihood through the vehicle. Therefore, this Court is of the view that the amount fixed by the Tribunal shall be awarded as compensation to the claimant and the same are as follows:

Sl.No	Name of Heads	Amount in Rs.
1	Damages to caused to vehicle	1,10,000
2	Loss of earning for a period of one month	25,000
3	Transportation Charges [to tow the vehicle from the place of accident to the workshop]	5,000
4	Mental agony	10,000
	TOTAL	Rs.1,50,000

16. Accordingly, this Court is of the view that the compensation fixed by the Tribunal, viz., Rs.1,50,000/- would

be just and reasonable and therefore, hereby grants a sum of Rs.1,50,000/- as compensation to the appellant with interest at the rate of 6% from the date of claim petition till the date of realisation. The 2nd respondent shall deposit the same before Tribunal within a period of four weeks from the date of receipt of copy of this order and on such deposit, the appellant is entitled to withdraw the said compensation on filing a separate application.

With the aforesaid observations and directions, the present Civil Miscellaneous Appeal is allowed and the order passed by the Motor Accident Claims Tribunal, Rasipuram made in M.C.O.P.No.748 of 2008 dated 04.08.2011. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Rasipuram.
2. The Section Officer,
VR Section, High Court,
Madras.

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