

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2390 & 2391 of 2013

C.M.A.No.2390 of 2013

Senthil Kumaran

... Appellant/Petitioner

Vs.

1.R.Karuppaian

2.United India Insurance Co.Ltd.,
No.2, Dr.Sankaran Road, Namakkal Town.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2011 made in M.C.O.P.No.54 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

C.M.A.No.2391 of 2013

Balasubramanian

... Appellant /Petitioner

Vs.

1.R.Karuppaian

2.United India Insurance Co.Ltd.,
No.2, Dr.Sankaran Road, Namakkal Town.

... Respondents/Respondents

Prayer: These Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2011 made in M.C.O.P.No.57 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

In C.M.A.Nos.2390 & 2391 of 2013

For Appellants : Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mrs.I.Malar

C O M M O N J U D G M E N T

C.M.A.No.2390 of 2013 is filed by the claimant against the award dated 19.01.2011 made in M.C.O.P.No.54 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

C.M.A.No.2391 of 2013 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 19.01.2011 made in M.C.O.P.No.57 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

2.Both the appeals arise out of the same accident and award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The claimants filed M.C.O.P.Nos.54 & 57 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by them in the accident that took place on 06.06.2006.

4.The case of the claimants is that on 06.06.2006 at about 15.000 hours at Erumapatti Kaikattie to Singalakombai Road, near Moola Thottam bend, the claimants were travelling in a Mini Door Auto bearing Regn.No.TN-28-J-8931, in the capacity of owner of goods, which is owned by the first respondent, driven by its driver in a rash and negligent manner, without observing the road traffic rules and capsized the same and caused accident. Due to the said impact, the claimants sustained grievous injuries all over their bodies.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 1st respondent/owner of the auto to pay a sum of Rs.68,400/- as compensation to the claimant in M.C.O.P.No.54 of 2007 and awarded a sum of Rs.3,13,300/- as compensation to the claimant in M.C.O.P.No.57 of 2007. Against the said award dated 19.01.2011, the claimants have come out with C.M.A.Nos.2390 & 2391 of 2013.

6.The learned counsel appearing for the claimants contended that the claimants met with accident and suffered fractures and severe head injuries besides other severe injuries all over their bodies. The Tribunal has awarded a sum of Rs.68,400/- & Rs.3,13,300/- respectively by exonerating the insurance company is against the evidences and Exhibits marked on behalf of the

claimant side, moreover no contra evidence or nor any documents produced on behalf of the respondents/ owner of the vehicle or insurance company. The Court below failed to consider that as per Ex.P1-FIR, it clearly says that at the time of accident P.W.1 & 2/ injured persons are sitting in the cabin of mini door auto as representative of the owner of goods in order to bring banana trees and coconut for marriage function of one Mohandass, who has hired the vehicle and engaged two coolie workers to transport the same. In the absence of any contra evidence, it should be presumed that both of them travelled as representative of owner of goods even though there were no goods in the vehicle. The Tribunal failed to note that as per ruling of the Hon'ble Apex Court as well as this Court and other various High Courts, even for purchase of goods or after unloading of goods, the representative of goods or owner of goods or coolies are allowed to travel in order to reach the destination, if the vehicle is once hired, it will automatically cover the owner of goods as well as representative of goods. Further, the learned Trial Court failed to note that the respondents not at all produced insurance policy copy, which itself would take adverse inferences against the insurance company. Hence, exonerating the insurance company is not at all correct. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7.A perusal of the records shows that the Mini Door Auto bearing Registration No.TN-28-J-8931 is a goods carriage vehicle. In the instant case, eventhough the Insurance Company had contended that the injured persons have not travelled as the owner of goods, they have not adduced any documentary evidence to prove the same. From the FIR (Ex.P1), it is seen that the injured persons are sitting in the cabin of mini door auto as representatives of the owner of goods in order to bring banana trees and coconut for marriage function of one Mohandass, who has hired the vehicle and engaged two coolie workers to transport the same. In the absence of the contra evidence being adduced by the Insurance Company, this Court comes to the conclusion that injured persons travelled in the auto as the owner of the goods. Therefore, the Insurance company is liable to pay the compensation to the claimant and the Award passed by the Tribunal in M.C.O.P.Nos.54 & 57 of 2007 is liable to be set aside in respect of the liability alone. The quantum of compensation awarded by the Tribunal is hereby confirmed.

8.In the result, the Civil Miscellaneous Appeals are allowed only in respect of the liability. The first respondent in both the cases is exonerated from paying compensation to the claimants. The second respondent / Insurance Company is directed to deposit the award amount determined by the Tribunal along with interest and costs, to the credit of M.C.O.P.Nos.54 &

57 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal within a period of six months from the date of receipt of a copy of this Judgment. On such deposit, the claimants in M.C.O.P.Nos.54 & 57 of 2007 are permitted to withdraw the award amount along with interest and costs. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Presiding Officer,
Motor Accident Claims Tribunal,
Fast Track Court,
Namakkal.

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

+6cc to Mr.C.Thangaraju, Advocate, S.R.No.6250 & 6251

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.6093

C.M.A.Nos.2390 & 2391 of 2013

JP(CO)
CB(29/04/2021)

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