

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1878 of 2016

S.Murali

... Appellant/Petitioner

Vs.

1.R.Gnanasekaran

2.The Managing Director,
Tamilnadu State Transport Corporation,
Coimbatore Division - 2,
Chennimalai Road, Erode.

3.G.Bhoopathi

4.K.Gurunathagounder

5.National Insurance Company Ltd.,
Mettur Road, Bhavani.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2008 made in M.C.O.P.No.212 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Bhavani, Erode District.

For Appellant	:	Mr.MA.P.Thangavel
For R5	:	Mr.S.Vadivel
For R2	:	Mr.K.J.Sivakumar
For R3 & R4	:	No Appearance
For R1	:	Given up

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.09.2008 in M.C.O.P.No.212 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Bhavani, Erode District.

2.The appellant is the claimant in M.C.O.P.No.212 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Bhavani, Erode District. He filed the above 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 09.11.2004.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the minidor auto/3rd respondent, belonging to the fourth respondent, and directed the respondents 3 and 4, being the driver and owner of the minidor auto to pay a sum of Rs.1,17,877/- as compensation to the appellant/claimant. The Tribunal dismissed the claim petition as against the respondents 1,2 and 5.

4.Challenging the portion of the award exonerating the 5th respondent from its liability and not being satisfied with the amount granted by the Tribunal dated 16.09.2008 in M.C.O.P.No.212 of 2005, the appellant has come out with the present appeal.

5.The learned counsel for the appellant contended that the appellant was travelling in the minidor auto along with goods, as owner. The appellant pleaded so in the claim petition and deposed the said fact as P.W.1. The fifth respondent, except stating in the counter statement that the appellant travelled as un-authorized passenger did not let in any evidence to disprove the contention of the appellant that he travelled along with the goods as the owner of the goods. The Tribunal extracting the judgment of the Hon'ble Apex Court reported in [2008 1 MLJ 66 (SC), National Insurance Company Ltd., Vs. Cholleti Bharatamma and Others] has accepted the averments in the counter statement made by the fifth respondent without considering the pleadings and evidence of the appellant and erroneously dismissed the claim petition against the fifth respondent. The learned counsel has prayed for setting aside the portion of the award dismissing the claim petition against the fifth respondent. He further contended that the amount awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent contended that the Tribunal dismissed the claim petition against the second respondent/Transport Corporation Bus and held that

the driver of the bus was not negligent. The Tribunal held that the accident had occurred only due to rash and negligence on the part of the driver of the minidor auto/third respondent herein. The second respondent is not liable to pay the compensation and prayed for dismissing the claim petition against the second respondent.

7. Per Contra, Mr. S. Vadivel, learned counsel appearing for the fifth respondent/Insurance Company contended that the appellant travelled in the goods vehicle as unauthorized passenger and therefore, the fifth respondent/Insurance Company is not liable to pay any compensation. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Transport Corporation & 5th respondent-Insurance Company and perused all the materials available on record.

9. From the materials available on record, it is seen that the Tribunal, considering the pleadings, held that the accident had occurred only due to the rash and negligent driving by the driver of the minidor auto/third respondent herein and dismissed the claim petition against the respondents 1 and 2. The Tribunal, following the judgment of the Hon'ble Apex Court reported in [2008 1 MLJ 66(SC), National Insurance Company Ltd., Vs. Cholleti Bharatamma and Others] dismissed the claim petition against the fifth respondent, holding that the appellant travelled in the goods vehicle as unauthorised passenger.

10. From the materials on record, it is seen that it is the case of the appellant in the claim petition that he travelled in the minidor auto belonging to the fourth respondent and the vehicle was driven by the third respondent, as the owner of the goods, along with his goods. He also deposed to that effect, as P.W.1. It is the case of the fifth respondent that the appellant travelled in the goods vehicle as passenger and hence the fifth respondent is not liable to pay any compensation, as the fourth respondent has violated the policy conditions. To substantiate the contention and to disprove the pleadings and evidence of the appellant, the fifth respondent has not let in any evidence. The Tribunal, without considering the pleadings and evidence, has held that the appellant has travelled as passenger in the goods vehicle as per Section 147 of the Motor Vehicles Act. The Insurance Policy covers the owner of the goods or his authorized representative who travelled in the goods vehicle along with the goods and Insurance Company is liable to pay the compensation to such a person. From the award of the Tribunal, it is seen that there is no discussion about the contention of the appellant and

without any reason, the Tribunal has accepted the case of the appellant and dismissed the claim petition against the fifth respondent. In view of the averments in the claim petition and evidence of the appellant as P.W.1, the portion of the award dismissing the claim petition against the fifth respondent is set aside. The fifth respondent, as the insurer of the minor auto, is liable to pay the compensation.

11.As far as quantum of compensation is concerned, the appellant has contended that he suffered 30% disability and examined P.W.2/Doctor to prove the nature of injuries and disability. There is no contra evidence let in by the fifth respondent. In the absence of any contra evidence, the Tribunal has accepted 30% disability assessed by the Doctor but granted only a sum of Rs.25,000/- towards 30% disability. The said amount is meagre. The accident is of the year 2004. The appellant is entitled to compensation of Rs.36,000/- at the rate of Rs.1,200/- per percentage of disability. The Tribunal has awarded a sum of Rs.35,000/-, Rs.20,000/-, Rs.42,877/- and Rs.5,000/- towards pain and suffering, extra nourishment & maintenance expenses, medical expenses and transportation respectively. The said amounts are just & reasonable and hence they are confirmed. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment, a sum of Rs.5,000/- each is granted towards attendant charges and loss of amenities. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	25,000	36,000	enhanced
2.	Pain & suffering	35,000	35,000	confirmed
3.	Extra nourishment & maintenance charges	20,000	20,000	confirmed
4.	Medical expenses	42,877	42,877	confirmed
5.	Transportation	5,000	5,000	confirmed

6.	Attendant charges	-	5,000	granted
7.	Loss of amenities	-	5,000	granted
	Total	Rs.1,27,877/-	Rs.1,48,877/-	enhanced by Rs.21,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,877/- is hereby enhanced to Rs.1,48,877/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The fifth respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount, if any, already withdrawn, by making necessary applications before the Tribunal. No costs. The appeal is dismissed as against the respondents 1 to 4. The respondents 3 and 4 are permitted to withdraw the amount lying in the deposit to the credit of M.C.O.P.No.212 of 2005, if the amount has already been deposited by them.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.4, Bhavani,
Erode District.

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

+1cc to Mr.Ma.P.Thangavel, Advocate SR.600
+1cc to Mr.S.Vadivel, Advocate Sr.165
+1cc to Mr.K.J.Sivakumar, Advocate Sr.159

C.M.A.No.1878 of 2016

ak[co]
srg 24/08/2020