

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1475 of 2017

Arul

.. Appellant

Vs.

1.K.Rasu

2.The Manager,  
Bajaj Allianz General Insurance  
Company Limited,  
C/o. ABT Maruti Limited,  
Chidambaram Road,  
Cuddalore.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.01.2017 made in M.C.O.P.No.1121 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore.

For Appellant : Mr.K.Varadhakamaraj for  
Mr.R.Ravichandran  
For Respondents : Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 10.01.2017 made in M.C.O.P.No.1121 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore.

2.The appellant is the claimant in M.C.O.P.No.1121 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore. He filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the damages caused to the goods, that occurred in the accident that took place on 03.05.2011.

3.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 car belonging to the first respondent and directed the second respondent, being insurer of the car, to pay a sum of Rs.60,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in not granting proper weightage to Exs.P4 and P5. The said documents are issued by shop keeper from whom the appellant has purchased the goods. The Tribunal failed to see that the appellant is a small business man carrying on business in village and was earning money from leasing out the vessels and other articles for marriage and also doing cycle repair shop and hiring the cycles. Being a small business man, the appellant could not buy all the materials at the same time and he will buy only on instalment. The appellant has purchased the goods from a big shop by Exs.P4 and P5 and it is not possible for the appellant to examine the shop owner or anybody working in the said shop to prove Exs.P4 and P5. The valuation given by the Tribunal on various items are meagre. The Tribunal having found that the materials were purchased prior to the date of accident, ought to have deducted only small percentage towards depreciation and awarded more compensation and prayed for allowing the appeal.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent Insurance Company contended that the appellant is relying on Exs.P4 and P5 for the claim made by him. He has not proved the same by examining the author of the documents. The Tribunal has rightly rejected Exs.P4 and P5 and awarded compensation by fixing valuation for the articles, after reducing the depreciation value and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused the entire materials available on record.

8. It is the contention of the appellant that the driver of the car belonging to the first respondent, drove the vehicle in a rash and negligent manner, lost his control and entered into the shop of the appellant, which is in the right side of the road and damaged all the articles kept in the shop of the appellant. The appellant has given list of articles damaged in

the accident, which reads as follows:

|                           |      |
|---------------------------|------|
| 1.Cycle                   | : 10 |
| 2.Doosai stove            | : 2  |
| 3.Big stove               | : 2  |
| 4.PA System               | : 10 |
| 5.Tube Lights             | : 50 |
| 6.Boads                   | : 5  |
| 7.Marriage settings       | : 1  |
| 8.Chairs                  | : 6  |
| 9.Marriage setting Board: | 1    |
| 10.Tower Box              | : 1  |
| 11.Fan                    | : 1  |
| 12.Shop Hoarding          | : 1  |

stating that the damages assessed was to the tune of Rs.2,25,000/- and market value of the damaged articles is not less than Rs.3,25,000/-. The appellant has produced Exs.P4 to P6 given by his sellers which were purchased six months prior to the date of accident. The Tribunal did not accept Exs.P4 and P5 only on the ground that the author of the documents were not examined. The Tribunal after having rejected the said documents, fixed its own value by reducing the value and granted compensation. The Tribunal has granted only 1/5<sup>th</sup> of the amount claimed by the claimant. The respondents have not let in any evidence to show there is no damage to the articles and value given by the appellant is excessive. Considering the oral and documentary evidence and the fact that the appellant is a small business man and no contra evidence was let in by the respondents, it will be just and reasonable to award a further sum of Rs.1,50,000/- in addition to the award amount of Rs.60,500/- awarded by the Tribunal.

9.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.60,500/- is enhanced to Rs.2,10,500/- along with interest and costs. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs, now determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1121 of 2011. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and

costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vkr

To

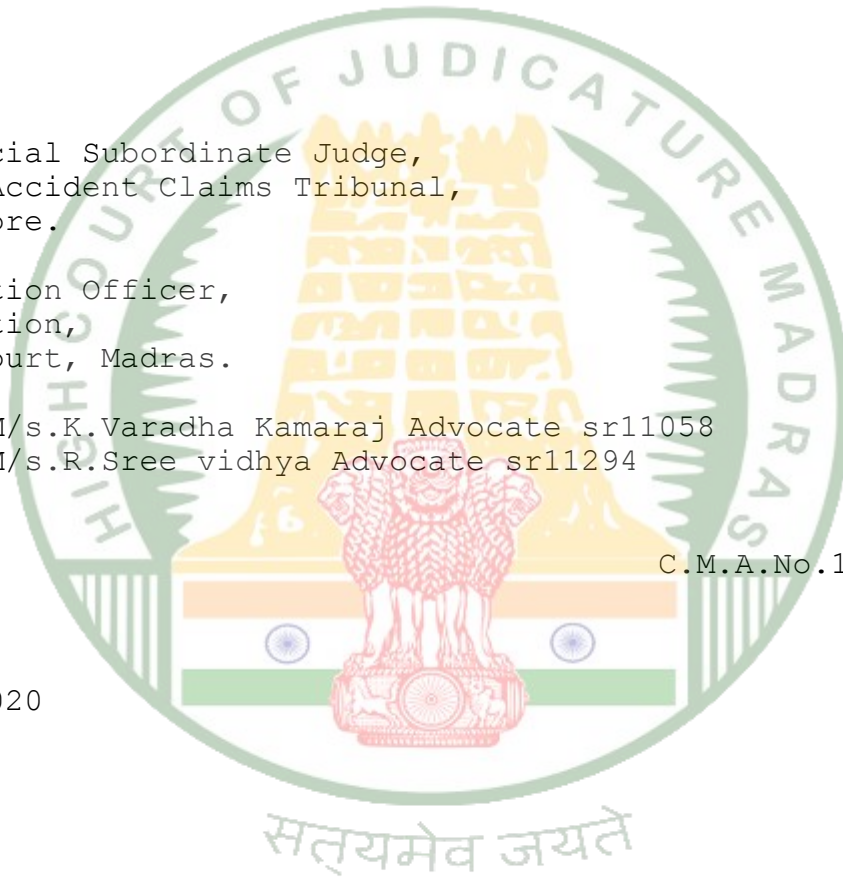
1.The Special Subordinate Judge,  
Motor Accident Claims Tribunal,  
Cuddalore.

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

+1 cc to M/s.K.Varadha Kamaraj Advocate sr11058  
+1 cc to M/s.R.Sree vidhya Advocate sr11294

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