



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3709 of 2012

1. The Oriental Insurance Co. Ltd.,
Ghatkopar Divisional Office,
Shreepal Complex, M.G. Road,
Ghatkopar West, Mumbai.

2. The Oriental Insurance Co. Ltd.,
No.115, Broadway,
Chennai - 108.

... Appellants 1,2/Respondents 2,4

Versus

1. S.Velu ... 1st Respondent/Claimant

2. Shreeji Transport Services (P) Ltd.,
Opp. Patel Road Ways Limited,
Purana Village, Thanee Behivandi Road,
Behivandi Taluk,
Maharashtra State. ... 2nd Respondent/1st Respondent

3. M/s.R.M.Kargo Carrier,
Rep. by its Proprietor R.Masilamani
No.18, New No.37,
Krishnankoil Street,
Chennai - 1. ... 3rd Respondent/3rd Respondent

4. M.Kanagaraj. ... 4th Respondent/5th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 23.01.2012 made in M.C.O.P.No.914 of 2010 on the file of the Motor Accidents Claims Tribunal, District Judge No.2, Kancheepuram.

For Appellants : Mr.S.Arunkumar

For Respondents

For R1 : No appearance

R2 to R4 : Given up



J U D G M E N T

WEB COPY This appeal is laid as against the judgment and decree dated 23.01.2012 passed by the learned District Judge No.2, Motor Accident Claims Tribunal, Kancheepuram, in M.C.O.P.No.914 of 2010, thereby awarded the compensation to the tune of Rs.1,50,000/-.

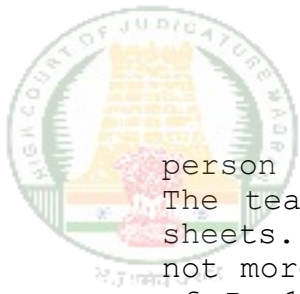
2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that he was running a tea shop opposite to Kamarajar Statue, Anna Salai, Baluchetty Chatram and he was earning a sum of Rs.10,000/- per month. While being so, on 15.02.2002, a vehicle owned by the first respondent driven by its driver in rash and negligent manner dashed with the third respondent tailor lorry and straight away entered into the petitioner's shop thereby, caused heavy loss to the property to the tune of Rs.1,50,000/-. Hence the claimant filed claim petition seeking compensation at Rs.1,50,000/-.

4. Resisting the same, the second respondent filed counter by stating that the accident was not happened because of the rash and negligent driving of the first respondent lorry insured with the second respondent. Only on the rash and negligent driving of the other lorry driver, which was insured with the fourth respondent, caused the accident for that, the claim also very excessive for the shop damage. More over the shop was only temporary shop and there is no permanent super structure. Therefore, the second respondent is not at all liable to pay any compensation to the claimant and sought for dismissal of the claim petition.

5. On the side of the claimant, he examined P.W.1 & P.W.2 and marked Ex.A.1 to Ex.A.4. On the side of the respondents, no one was examined as witness and no material has been marked as exhibit. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fixed liability on the second respondent and awarded a sum of Rs.1,50,000/- as compensation payable by the second respondent. Aggrieved over the compensation awarded by the Tribunal, the second respondent i.e., insurance company preferred this appeal in respect of the quantum of compensation.

6. The learned counsel appearing for the appellant/second respondent submitted that admittedly the tea shop owned by other



person and the claimant was the tenant at the time of accident. The tea shop was conducted in a temporary shed and folded with sheets. In the year 2002, the material for tea shop worth was not more than Rs.50,000/-. Even then, the Tribunal awarded a sum of Rs.1,50,000/- as claimed by the claimant. The claimant also failed to produce any evidence to show that the material which were damaged due to the accident worth about Rs.1,00,000/- and also damaged caused to the wall about Rs.50,000/-. Therefore, he prayed to set aside the award passed by the Tribunal.

7. Heard Mr.S.Arunkumar, learned counsel appearing for the appellants/respondents 2 & 4. No one is appeared on behalf of the first respondent/claimant.

8. On perusal of records, the claimant was running a tea shop opposite to Kamarajar statue, Anna Nagar, Baluchetty Chatram. There was no door number for the tea shop conducted by the claimant. The claimant marked Ex.P.2, the photographs which were taken during the accident, revealed that the shed put up by sheets on the un-pasted wall. It seems that a temporary sheet, which were put up for running tea shop. Further there is no evidence to show that two refrigerators, two cycles, show case, wooden articles, food articles were damages due to the accident.

9. As rightly pointed out by the learned counsel appearing for the appellant, in the year 2002 for running tea shop the material worth is not more than Rs.50,000/-. Even assuming that the goods worth about more than Rs.50,000/-, the compensation of Rs.1,50,000/- is higher side for the value of the material. Though the claimant was a tenant at the time of accident, he has to return the building in good condition. As such, he is entitled for the cost of the damages to the wall. Considering the above facts and circumstances, this Court feels that the compensation may be fixed at Rs.1,00,000/-.

10. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is reduced from Rs.1,50,000/- to Rs.1,00,000/- (Rupees one lakh only)

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The first appellant is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.



(iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) There shall be no order as to costs.

Sd/-
Deputy Registrar
(Special Cell - CJ Conf)

//True Copy//

Sub Assistant Registrar

rts

To

1. The District Judge No.2,
Motor Accident Claims Tribunal,
Kancheepuram
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.26407

C.M.A.No.3709 of 2012

RSV(CO)
SU(09/11/2021)