



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1314 of 2010

V.Vijayajarengan ... Appellant/Petitioner

-vs-

1.M.Venkatesh ... Respondent/1st Respondent

2.M/s.Oriental Insurance Co.,
Through its Branch Manager,
No.2, Kheny Building,
No.3-1st Floor, 1st Cross,
Gandhi Nagar, P.B.No.9555,
Bangalore-580 009. ... Respondent/2nd Respondent

(1st respondent remained ex-parte in Tribunal. Hence
notice given up)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1998, against the award the Judgment and decree dated 27.03.2010 made in M.C.O.P.No.30 of 2009 on the file of the Motor Accident Claims Tribunal (Sub-Court), Kovilpatti.

For Appellant : Mr.C.SankarPrakash
For R2 : Mr.K.Bhaskaran
For R1 : Ex-parte

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation.

2.M.C.O.P.No.30 of 2009 was filed by the appellant seeking compensation of Rs.1,10,000/-. According to the claimant/appellant, on 01.06.2016, at about 3.45 p.m., when he along with his son viz., Giritharan were standing nearby their building, a lorry bearing Registration No.KA-53-4026 owned by the first respondent and insured with the second respondent driven by its driver, in a rash and negligent manner and hit against the iron advertising board and also run into the building, after demolishing the store room. In this regard, a criminal case in Crime No.72 of 2008 was registered against the driver of the lorry.



3.The claim petition was opposed by the Insurance Company by filing a counter, wherein, they have disputed the right of the appellant to claim damages. It is further stated that the report of the Surveyor is false and the claim is highly excessive.

4.The Tribunal, after analysing the evidence adduced by the parties, awarded Rs.41,000/- with interest at the rate of 7.5% p.a.

5.Heard, Mr.C.Sankar Prakash, learned counsel appearing for the appellant and Mr.K.Bhaskaran, learned counsel appearing for the second respondent and perused the materials available on record.

6.The claimant, in order to substantiate his case, has examined two witness and produced Surveyor's Report Ex.P.5. R.W.1, has stated in his evidence that there is no proper intimation for damage to the properties. In para No.7, the Tribunal has held that, Ex.P.5 is only the Assessment Report, but the claimant has not produced any material to show that the actual amount spent for rectifying the said damages. It is not disputed that on 01.06.2006, the lorry owned by the first respondent had caused damage to the compound wall and other properties of the appellant, which is evident from Ex.P.6.

7.After going through the evidence available on record, this Court is of the opinion that it would be appropriate to enhance to Rs.60,000/- with interest at the rate of 6% p.a., from the date of claim petition till the date of realization. Accordingly, the award is modified and the appeal is partly allowed. No costs.

8.The second respondent/Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount so deposited with accrued interest and costs, less the amount already withdrawn, if any, by filing a formal petition before the Tribunal.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To:

1.The Motor Accident Claims Tribunal
(Sub-Court),
Kovilpatti.

Copy to

The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BHASKARAN, Advocate (SR-5064[F] dated 15/02/2021)

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-5071[F] dated
15/02/2021)

C.M.A (MD) No.1314 of 2010
12.02.2021

KB(17.06.2021) 3P 6C