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C.M.A.(MD)No.1199 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.07.2021

Delivered On : 02.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.1199 of 2013

The Managing Director,
Kerala State Transport Corporation,
Fort, Trivandrum, Kerala State. ...Appellant / Respondent 2

Vs.

1.K.Shibu ...Respondent / Petitioner

2.Viswanathan

3.Baskaran

4.Devaraj

5.The New India Assurance Co.,

Rep. By its Manager,

Nagercoil Branch,

(Camp at Pillars Gate)

Opp. Anna Art Gallery,

Palamore Road, Nagercoil,

Kanyakumari District.

...Respondents 2 to 5 /
Respondents 1,3,4 & 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 24.07.2012 made in M.C.O.P.No.159 of 2007, on the file of Motor Accidents Claims Tribunal (Sub Court), Kuzhithurai.

For Appellant	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.C.Kishore
	For Mr.K.Sree Kumaran Nair
For 5 th Respondent	: Mr.J.S.Murali
For Respondents 2 to 4	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.159 of 2007 dated 24.07.2012, on the file of the Motor Accidents Claims Tribunal/Sub Court, Kuzhithurai.



2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the respondents 2 to 5 herein are the respondents 1, 3 to 5 in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.159 of 2007, claiming compensation for damages. The Tribunal has awarded a sum of Rs.1,14,634/- (Rupees One Lakh Fourteen Thousand Six Hundred and Thirty Four only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.159 of 2007 is as follows:

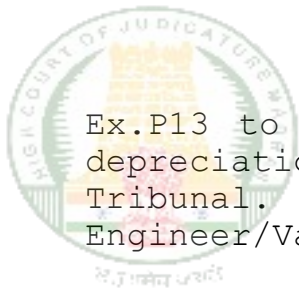
The claimant was running a stationery shop in a rented building in door No.14-49A in Senkammulai Ward, Kulithurai Municipality. On 04.07.2007, at about 12 noon, a bus bearing registration No.TN-KS-15-5379 dashed against the lorry bearing registration No.TN-74-V-7479. Again the bus entered into the building of the claimant and caused damages to the articles inside the shop. The claimant claimed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards damages.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The accident took place due to the rash and negligence driving of the third respondent driver. The bus was driven by its driver in a careful and cautious manner. There was no damage to the shop. The shop was closed at the time of accident. The owner of the building, one Sudharsan Nair has filed another claim petition in M.C.O.P.No.120 of 2007. Only on his instigation, the petitioner has come forward with this claim petition. The respondents 3 and 4 already paid compensation and settled the issue. Only with the motive to grab money from the respondents 1 and 2, the petitioner has come forward with this petition. The respondents 3 to 5 are liable to pay compensation. The claim is excessive.

5.On the side of the petitioner therein, three witnesses were examined and 29 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.1,14,634/- (Rupees One Lakh Fourteen Thousand Six Hundred and Thirty Four only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the trial Court has failed to consider the judgments of the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd., v. Sheela Dutta and others** reported in **2011 ACJ 2729**. The actual value of the stocks in trade and the shop premises and building were not considered by the Tribunal. The extent of damage was not proved.



Ex.P13 to Ex.P19 cannot be used to fix the extent of damage. The depreciation on the electronic goods were not considered by the Tribunal. Mere production of documents and the report of an Engineer/Valuer are insufficient to prove the damages.

7.On the side of the appellant, it is stated that the claimant cannot claim damages. No negligence was fixed on the lorry driver. It is wrong to fix liability on the bus driver. Ex.P13 to Ex.P17 are only bills and there is no proof for purchase and that the damages was not proved.

8.On the side of the respondents, it is stated that the claimant was running the shop on rental basis. All the materials in the shop and the building were damaged. Just few minutes before the accident, the claimant left the shop. Otherwise he would have been injured. In a connected case in M.C.O.P.No.120 of 2007, the Tribunal considered the evidence of Engineer and awarded amount. Ex.P19 was proved by the evidence of P.W.3, Engineer.

9.The lower Court fixed the bus driver as responsible for the accident, on the basis of Ex.P1. The fact that the claimant was running the shop was proved through Ex.P9, Ex.P10, Ex.P11, Ex.P12, Ex.P23, Ex.P25. Ex.P13 to Ex.P17 are the bills for the articles damaged in the shop. Ex.P19 is the list of articles damaged. The appellant is questioning Ex.P19. P.W.3 has deposed regarding Ex.P19. Since Ex.P19 was proved by the evidence of P.W.3, the award on the basis of Ex.P19 is reasonable.

10.In the above circumstances, it is held that the amount fixed by the Tribunal is reasonable. There is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.159 of 2007 dated 24.07.2012, on the file of the Motor Accidents Claims Tribunal/Sub Court, Kuzhithurai.

11.In the result, this Civil Miscellenaous Appeal is dismissed. The first respondent is entitled to a sum of Rs.1,14,634/- (Rupees One Lakh Fourteen Thousand Six Hundred and Thirty Four only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

12.The respondents therein are directed to deposit Rs.1,14,634/- (Rupees One Lakh Fourteen Thousand Six Hundred and Thirty Four only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the respondents therein. The



claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal, Sub Judge,
Kuzhithurai.

Copy to:

1.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-25009[F] dated 02/08/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-25264[F] dated 04/08/2021)

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KB(17.08.2021) 4P 6C