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C.M.A.No.2937 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	10.02.2022
PRONOUNCED ON	:	28.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2937 of 2013

Balamurugan

... Claimant/ Appellant

Vs.

1) K.V.B.Chandrasekar Rao

2) The New India Assurance Co. Ltd.,
Officer's Line, C.S.I.Complex,
Vellore

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.03.2006 made in M.C.O.P.No.120 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District.

For Appellant : Mr.V.Parivallal

For R-2 : Mr.S.Dhakshinamoorthy

**R1 ex parte*



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J U D G M E N T

The claimant is the appellant herein. The present appeal has been filed seeking to enhance the quantum of compensation and for direction to the second respondent/insurance company to satisfy the award amount at the first instance and later recover it from the owner of the vehicle.

2. The brief facts of the case of the claimant is as follows:-

On 27.02.2001 at about 7.45 p.m., the mini lorry bearing Reg.No.TN 04 C 8145 was driven by its owner/claimant along with three other passengers and while the vehicle was proceeding on Thiruthani-Shollingar main road, near BuchinaiduGandigai Junction road, the first respondent's lorry bearing Reg. No. AP 09 V 2662, which was proceeding ahead of the claimant's mini lorry, was driven by its driver in a rash and negligent manner, wherein the driver of the lorry has applied the break suddenly to stop the lorry without any prior signal and as a result, the claimant's mini lorry, which was traveling in the same course of direction of the first respondent's lorry, dashed against the rear part of the 1st respondent's lorry. As a result of the said collision, one among the passengers, who was traveling in the claimant's mini lorry died on the same day at the hospital and the others sustained injuries and they filed MCOPs before the Tribunal. The claimant herein, had filed a claim petition in M.C.O.P.No.120 of 2003 against the respondents, who are the owner and



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insurer of the lorry bearing registration No.AP 09 V2662, in M.C.O.P.No.120 of 2003, seeking for a compensation of Rs.2,00,000/- for the damages caused to the claimant's vehicle.

3. The case of the second respondent/ Insurance Company is that the driver of the first respondent's lorry was not in possession of a valid driving license. He also added that there was no permit for the first respondent's lorry and therefore, the claim made is not maintainable and is liable to be dismissed.

4. Before the Tribunal, on the side of the claimant, three witnesses, P.W.1 to P.W.3 were examined and exhibits Ex.P1 to P8 were marked. On the side of the respondents, one witness R.W.1 was examined and exhibits Ex.R1 & R.2 were marked. Upon hearing both sides and perusing the records, the Tribunal has awarded a sum of Rs.47,272/- (Rupees Forty Seven Thousand Two Hundred and Seventy Two only) as compensation, fastening the entire liability on the first respondent alone. The tribunal held that the second respondent is not liable to pay the compensation.

5. Aggrieved by the said award, the present appeal has been filed.



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6. (a) The learned counsel appearing for the appellant/Claimant brought to the notice of this Court that for the fatal and injury cases involved in the same accident, claimants filed claim petitions before the Tribunal in M.C.O.P.Nos.97 of 2003 and 247 of 2004 and they have been granted compensation.

(b) He further added that F.I.R. was registered against the lorry driver (Reg.No.AB 9 V 9662); investigation revealed that the 1st respondent's lorry insured with the 2nd respondent was solely responsible for the accident. It is also seen that the 1st respondent's lorry driver has paid the fine before the Criminal Court. He further submitted that the accident had occurred when the 1st respondent's lorry driver had applied sudden brake and stopped the vehicle without prior signal and igniting danger lights.

(c) According to the learned counsel for the appellant/ claimant, the Tribunal must have fixed the liability on both the respondents jointly and severally but erred in passing an Award against the first respondent/owner of the lorry and also added that the Tribunal ought to have directed the second respondent Insurance Company to pay the Award amount and recover the same from the owner of the lorry/first respondent.

(d) The learned counsel for the appellant/claimant also submitted that the Tribunal has awarded a meager amount as compensation. The assessment



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of the Insurance Surveyor is much less than the actual damages. The appellant/Claimant has suffered mental agony and there is heavy loss of income caused due to the non-plight of the vehicle.

7. Per contra, the learned counsel for the second respondent Insurance Company submitted that the Tribunal has rightly granted a just and reasonable compensation and hence, no interference is necessary.

8. Heard the learned counsel appearing for the appellant and the second respondent-insurance company and also perused the materials available on record.

9. Before the Tribunal, the appellant/claimant whose testimony as P.W.1 is that he did not know about the accident personally and Insurance Surveyor Report shows the damage to the tune of Rs.50,000/- and his fees as Rs.1,872/- and that the mini van for which compensation is sought had no insurance and so he could not claim compensation, so the claim petition was filed. It is also P.W.1's evidence that the damage report has been filed four months after filing of MCOP.

10. P.W.2 driver of the mini van also deposed that the lorry in front of him without any signal or danger light suddenly applied brake and therefore,



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the mini van dashed on the rear side of the lorry resulting in the accident, wherein, one person traveled in the van died and two persons got injured.

P.W.2 also spoken that he did not know as to whether insurance policy coverage is there for the mini van or not.

11. P.W.3 Surveyor who inspected the mini van given his damage report which is marked as Ex.P.7 and the fees receipt as Ex.P.8. In his cross examination, P.W.3 has stated that he inspected the vehicle only after one month at Kodaikal. He also stated that he did not know about the quotation given by Durga Automobiles estimating Rs.1,79,450/- for repair.

12. The Tribunal, based on the oral evidence and exhibits particularly, Ex.P.1 MVI report of the van, Ex.P.2 MVI report of Lorry, Ex.P.4 Charge sheet and Ex.P.5 judgment of criminal court, given finding that due to rash and negligent act of first respondent's lorry driver who suddenly applied brake without danger lights signal, the accident took place and the first respondent is solely responsible for the accident and also solely liable to pay the compensation.

13. The above finding is based on evidence and this court is not inclined to interfere with the same and this court finds no perversity on the liability aspect also.



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14. As far as quantum of compensation is concerned, though the claimant claimed Rs.2,00,000/- as compensation towards damages of the vehicle, the Surveyor who inspected the mini van bearing Reg.No.TN-04-C-8145 given the damage report of the vehicle wherein, he assessed the damage as Rs.45,400/- and his fees as Rs.1,872/-. The learned Judge, Tribunal, taking note of the evidence of P.Ws.1 and 3 that the damage report was filed only after four months of filing of MCOP to the tune of Rs.1,79,450/- from one Durga Automobiles which particulars were not known to P.W.3, held that the damages are to the tune of Rs.45,400/- only as evident from Ex.P.7. As such, the Tribunal granted compensation of Rs.47,272/-, which this court feels it as fair, just and proper and no infirmity is found in the impugned award.

15. In view of the above reasonings, the Civil Miscellaneous Appeal stands dismissed. No costs. The Judgment and Decree dated 07.03.2006 made in M.C.O.P.No.120 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ranipet, Vellore District stands confirmed.

28.06.2022

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J.NISHA BANU, J.,



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Index : Yes/No

Internet : Yes/No

Speaking Order / Non-Speaking Order

To:

- 1) The Motor Accidents Claims Tribunal,
Sub Court, Ranipet, Vellore District.
- 2) The V.R.Section,
Madras High Court, Chennai.

Judgment made in
C.M.A.No.2937 of 2013

Dated:
28.06.2022