

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.386 of 2012

Babu

... Appellant/Petitioner

Vs.

1.S.Sakthivel

2.The Branch Manager,  
New India Assurance Company Limited,  
II Floor, 2 Paramathi Road,  
Namakkal - 637 002.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.37 of 2002, dated 31.03.2004, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate No.1, Krishnagiri.

For Appellant : Mr.Sharath Chandran  
for Mr.V.Raghavachari

For Respondents : No Appearance

J U D G M E N T

The short facts of the case are as follows:-

On 16.11.1997, when the petitioner and others were proceeding on the Uthangarai Main Road, in the Tempo bearing registration No.TN-28B-1266 at about 11.30 a.m., the driver of the tempo had driven it in a rash and negligent manner and as a result the tempo capsized. The claimant sustained bone fracture injuries. Hence, the claim petition has been levelled against the owner and insurer of the vehicle.

2. The Insurance Company had filed a counter statement and opposed the claim petition. The respondent had denied the averments that the accident had been committed by the driver of the tempo. The averments that the claimant had

travelled with sundry goods was also denied. The petitioner and others had travelled in the tempo, which is violative of the policy conditions.

3. After recording the averments of both sides, the Tribunal had framed two issues. On the side of the claimant, two witnesses were examined and six documents were marked. On the side of the respondents, no witness, no documentary evidence.

4. After recording evidence of witnesses, the Tribunal had granted Rs.1,02,800/- with interest at the rate of 9% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal and has sought additional compensation. This Court notice had been served on the Insurance Company, but no one had appeared. Besides, the appeal is pending for about four years on this Court's file. Hence, this Court is constrained to pass final order.

5. The highly competent counsel Mr.V.Raghavachari appearing for the appellant submits that the driver of the tempo had driven it in a negligent manner and caused the accident. The offending vehicle had been insured with the Insurance Company. Therefore, the Trial Court had granted compensation against the Insurance Company but the compensation amount is not an adequate one. The claimant is aged about 38 years and involved in the Coconut business and also agricultural operations. The claimant's rib bone has been fractured and he had sustained 30% disability. The fractured bones on his rib were malunited and this is permanent in nature. The Tribunal had not granted an adequate compensation. Under the relevant heads. The claimant had spent about Rs.10,000/- for medical expenses. Hence, the learned counsel entreats the Court to grant additional compensation.

6. On considering the facts and circumstances of the case and arguments advanced by the learned appellant counsel and on perusing the typed set of papers, this Court is of the view that the Tribunal had not granted compensation under the head of attender charges, transport and loss of earning during medical treatment period and loss of amenities since the rib bones were fractured on his right side. Hence, this Court grants additional compensation of a sum of Rs.5,000/- under the head of transport; Rs.5,000/- towards attender charges; Rs.10,000/- under the head of loss of earning during medical treatment period and Rs.27,200/- towards loss of amenities and loss of comfort since the claimant's both sides rib bones were

fractured and malunited which is permanent in nature. As such, this Court grants a sum of Rs.47,200/- as additional compensation, which is the appeal value. Hence, the appeal is allowed.

7. This Court directs the Insurance Company to deposit the additional compensation with interest at the rate of 7.5% per annum, from the date of claim petition till 20.07.2004 and from 02.02.2012 till date of deposit being made, it is open to the claimant to withdraw the said amount after filing a memo along with a copy of this order, before the Trial Court. Hence, the above appeal is allowed. There is no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate No.1,  
Krishnagiri
2. The Section Officer,  
V.R.Section,  
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.51128

C.M.A.No.386 of 2012

TEJ(CO)  
CA(29/10/2015)

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