

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.382 of 2017

S.Paramasivam

... Petitioner/Appellant

/vs/

1 . S.Rajesh Kumar

2 . National Insurance Co. Ltd.
Cuddalore,

3 . The Managing Director,
T.P.T.C.Corporation,
Villupuram. ...

Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 04.10.2002 made in M.C.O.P.No.317 of 2002 on the file of Motor Accident Claims Tribunal, Additional District Judge, at Chidambaram.

For Appellant ... Mr.A.A.Venkatesan

For 2nd Respondent ... Mr.S.Vadivel

For 3rd respondent ... Mr.S.V.Vasanthakumar

सत्यमेव जयते

J U D G M E N T

The appellant, who is the claimant in M.C.O.P.No.317 of 2002 on the file of the learned Additional District Judge, Chidambaram, has filed the present Civil Miscellaneous Appeal seeking enhancement of the compensation awarded to him for the injury sustained by him in a motor accident by the Motor Accidents Claims Tribunal.

2. The claimant had sustained fracture on his right elbow. The Tribunal has found that the accident was due to the negligence of the driver of the 3rd respondent vehicle. As there is no appeal preferred by the owner or the insurance

company on the question of negligence, the same has not been discussed. The appeal is only with respect to the enhancement of the quantum of compensation.

3. Before the Tribunal, 3 witnesses have been examined on the side of the Petitioner/Claimant as P.W.1 to P.W.3 and on his side, as many as 22 documents, namely, Ex.P1 to Ex.P22 have been marked.

4. The claimant was 45 years old as on the date of the accident and he was a mason. To evidence the same, he has also filed Ex.P14 which is an identity card. The Wound Certificate Ex.P7 would go to show that there was a fracture on his right elbow and the X-ray Films are marked as Ex.P8 and Ex.P9. The Tribunal has not considered Ex.P11 which is the Medical Bill for a sum of Rs.10,000/- as the same did not contain any signature.

5. The learned Counsel appearing for the 2nd respondent Insurance Company contended that the Medical Bills and the Discharge Certificates produced by the claimant were disbelieved by the Tribunal as they were not admissible in evidence for various reasons. However, the Doctor, who was examined as Pw3, has certified that the claimant had sustained 40% of Partial Permanent Disability, considering the fact that the claimant was a mason for whom the right hand is an important organ to carryout his avocation.

6. Having sustained severe fracture due to the accident, the appellant/claimant should be sufficiently compensated. As there was no supporting documents for the claim made by the appellant, the Tribunal had awarded Rs.15,000/- in all for the transportation, medical expenditure, pain and sufferings and also awarded a compensation of Rs.20,000/- for loss of earning, totalling to a sum of Rs.35,000/-.

7. Though no medical bills are produced, admittedly, the claimant suffered a fracture on his right elbow and he could not have gone for his work at least for four months. Though P.W.3 had certified that the partial permanent disability is at 40%, taking 30% as the disability, a sum of Rs.30,000/- (30 x 1000) can be awarded. For Medical Expenses, a sum of Rs.5,000/- and for pain and sufferings and nutrition, a sum of Rs.5,000/- can be awarded. Further, fixing the loss of earnings at Rs.5,000/- p.m. and calculating for four months, it comes to Rs.20,000/-. Thus, in all, totalling to a sum of Rs.60,000/- is awarded as total compensation.

8. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the compensation from Rs.35,000/- to Rs.60,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit. The 2nd respondent Insurance Company is directed to deposit the total award amount within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the claimant is permitted to withdraw the same. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

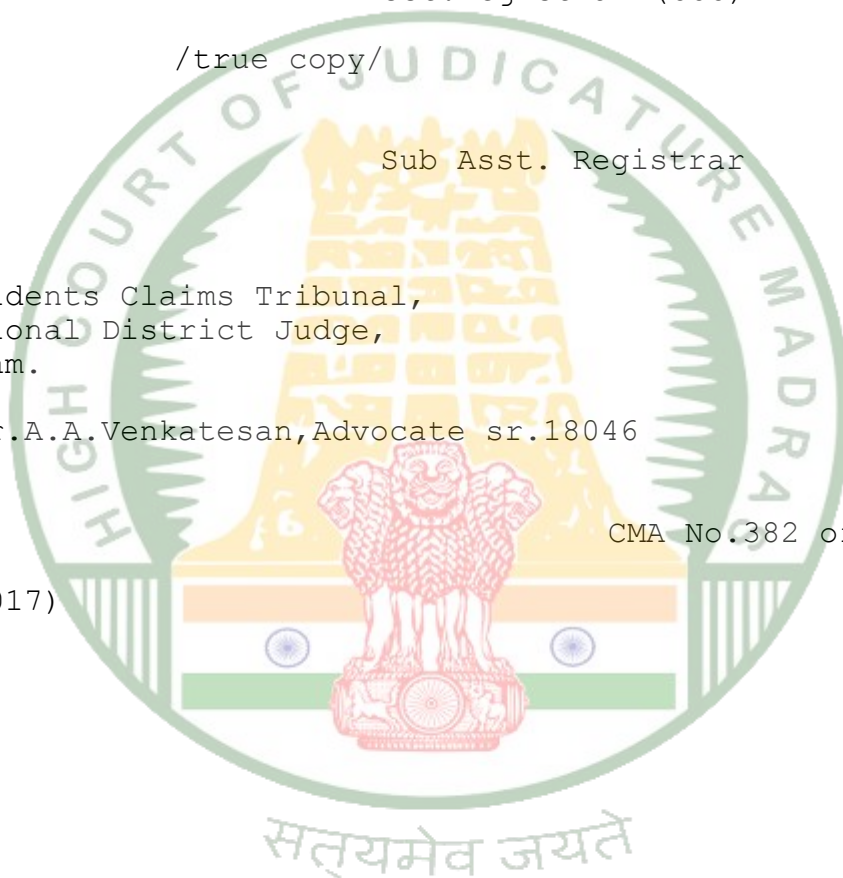
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To
Motor Accidents Claims Tribunal,
The Additional District Judge,
Chidambaram.

+lcc to Mr.A.A.Venkatesan,Advocate sr.18046

CMA No.382 of 2017

rsy(co)
ss(10/4/2017)



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