

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2014 of 2010
and MP.No.1 of 2010

The Divisional Manager,
United India Insurance Company Ltd.,
TKM Complex, Katpadi Road,
Vellore - 632 004.

... Appellant

Vs.

1.Y.Sathish Kumar (deceased)

2.P .Dhayalan

(Respondent 2 was set exparte before the lower Court)

3.Yuvaraj

4.Kuppammal

(Respondents 3 & 4 are brought on record as legal heirs
of the deceased 1st respondent vide order dated
21.12.2016 in MP.No.3 of 2015 in CMA.No.2014 of 2010)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act 1988 against the award and decree dated
27.01.2009 made in MCOP.No.530 of 2007 on the file of the Motor
Accident Claims Tribunal, Additional District cum Sessions Court
(Fast Track Court) at Vellore.

For Appellant :Mr.C.Ramesh Babu

For Respondents :Mr.S.Prasad Babu [for R3 & R4]

JUDGMENT

This appeal is preferred by the Insurance Company which is
arrayed as the second respondent before the Tribunal in
MCOP.No.530 of 2007 on the file of the Motor Accident Claims
Tribunal, (Additional District cum Sessions Court /Fast Track
Court), Vellore, has come forward with this appeal challenging
the quantum of compensation awarded.

2. In a road accident involving a passenger carrying bus that took place on 14.12.2006, the claimant suffered fracture to his left ankle. Seeking compensation for the same, he approached the Tribunal with a claim of Rs.3,00,000, against which the Tribunal has granted an award of Rs.71,000/- payable with interest @ 7.5% per annum .

3. The learned counsel for the appellant submitted that it is a case where the claimant has not even produced any disability certificate and yet the Tribunal was far too generous in granting the compensation that it had granted.

4. On perusal of the papers, I do not find any particular infirmity in the award passed. Even if it were to be presumed that Rs.71,000/- represented an excessive compensation by 2006 standards, still by today's cost of living it has lost all its real significance. Therefore, I do not propose to interfere with the award passed.

5. At this juncture, the learned counsel for the respondents 3 and 4 submitted that the claimant had since died leaving behind his aged parents who are the respondents 3 and 4 herein and added that it is a case where the Court should invoke its power under Order XLI Rule 33 CPC. He added that plate was fitted to correct the fracture, and the victim was in hospital for two months, which is shown in the discharge summary, and that his pain and suffering was not adequately compensated.

6. Nothing prevented the claimant to file a separate appeal challenging the quantum at that appropriate time and today it is too late in the day to seek the Court to interfere and invoke Order XLI Rule 33 CPC. As rightly pointed by the learned counsel for the appellant, the claimant has not even filed any material to show that he had suffered permanent disability of any kind and in the absence of any evidence indicating permanent disability, this Court cannot presume it to be so. It may be unfortunate that the parents of the victim/ respondents 3 and 4 herein have lost their only son, but then in invoking this jurisdiction under beneficial legislation, everything that the Court does should be legitimate and the Court shall not be driven by any extra statutory sentiments. This Court therefore cannot entertain the prayer of the respondents 3 & 4 herein to invoke Order XLI Rule 33 of CPC. Accordingly, the appeal is

dismissed without costs. The learned counsel for the appellant submitted that the entire award amount has already been deposited and the parents of the claimant (respondents 3 and 4) are permitted to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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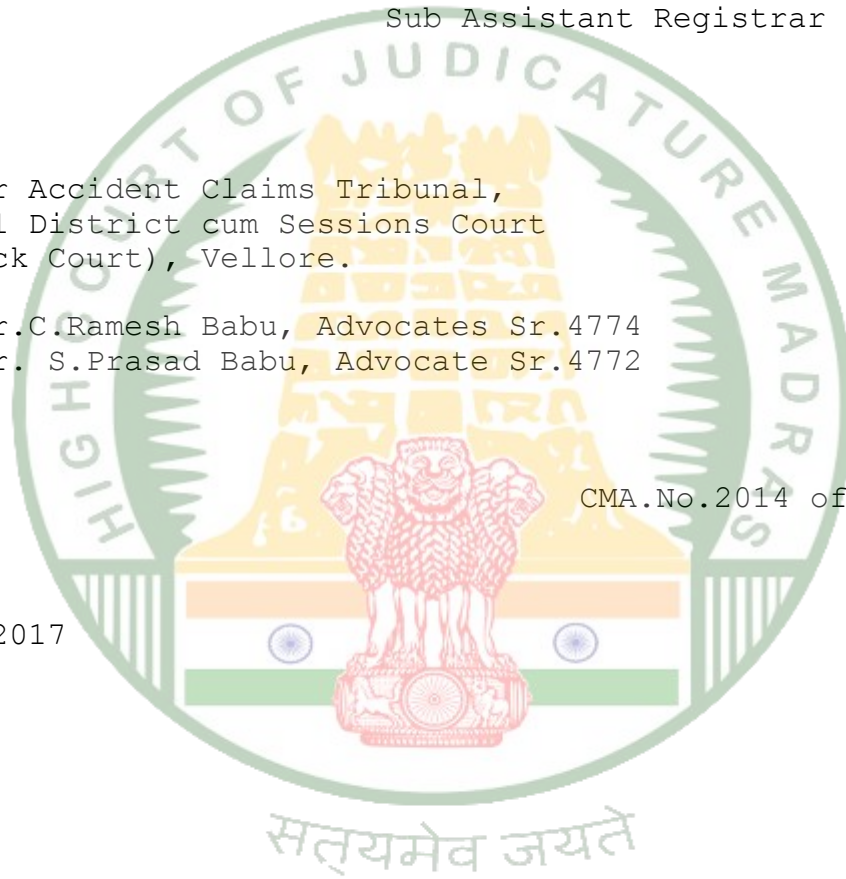
The Motor Accident Claims Tribunal,
Additional District cum Sessions Court
(Fast Track Court), Vellore.

+1cc to Mr.C.Ramesh Babu, Advocates Sr.4774

+1cc to Mr. S.Prasad Babu, Advocate Sr.4772

CMA.No.2014 of 2010

ad[co]
srg 27/2/2017



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