



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.09.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.Nos.2344 to 2350 of 2007

1. Thulasimani	...	Appellant in CMA No.2344/2007/Claimant
2. Sundrammal	...	Appellant in CMA No.2345/2007/Claimant
3. Palanisamy	...	Appellant in CMA No.2346/2007/Claimant
4. Rangammal	...	Appellant in CMA No.2347/2007/Claimant
5. Karuppusamy	...	Appellant in CMA No.2348/2007/Claimant
6. Ramasamy	...	Appellant in CMA No.2349/2007/Claimant
7. Muthulakshmi	...	Appellant in CMA No.2350/2007/Claimant

Versus

1. R.Selvam @ Kumarasamy	
2. A.Sowkath Aligan	
3. National Insurance Co. Limited, Divisional Office - II, State Bank Road, Coimbatore - 600 018. ...	Respondents in all CMAs/ Respondents

Prayer : Civil Miscellaneous Appeals filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.03.2003 made in M.C.O.P.Nos.1161, 1165, 1169, 1173, 1177, 1181 of 1997 respectively on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court No.II), Coimbatore.

For Appellants : Mr.E.D.Sethupathi in all C.M.As
For R3 : Mr.K.Padmanabhan in all C.M.As

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred against the common Judgment and Decree dated 24.03.2003 made in M.C.O.P.Nos.1161, 1165, 1169, 1173, 1177, 1181 of 1997 respectively on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge) (Fast Track Court No.II), Coimbatore.



2. The brief facts of the case are as follows :

On 15.09.1997 at about 2.30 p.m, the claimants were travelling in a tempo bearing Registration No.TCL 1114 from south to north of Kovai to Annur Road. The driver of the said tempo drove the vehicle with a great speed and without following the traffic rules and regulations and over took the lorry which was going ahead, due to which, the said tempo capsized on the mud road. As a result, the claimants have sustained grievous injuries. The first and second respondents are the driver and owner of the said tempo. The said tempo was insured with the third respondent Insurance Company. The claimants have claimed a sum of Rs.1,00,000/- each as compensation. There are seven claim petitions filed by the injured and the tribunal has heard together all the seven petitions and passed a common judgment.

3. The third respondent/Insurance Company, in the counter statement before the tribunal has stated that they have admitted the fact that the tempo is insured with them and the owner of the tempo is the second respondent. The objection raised by the the third respondent/Insurance Company is that the tempo involved in the said accident is a good carriage vehicle and was not having a valid permit and there was no policy and no road tax was assessed for the said tempo at the time of the accident. However, it is against the terms and conditions of the policy, since the claimants were travelled in the goods vehicle as passengers. Therefore, the claimants are not entitled for any compensation.

4. The tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.5,000/- to each claimant by holding that the respondents 1 and 2 are liable to pay the compensation and dismissed as against the third respondent. Aggrieved against the said award passed by the tribunal, the claimants have preferred these appeals.

5. In the grounds of appeal, the appellants have stated that the tribunal has failed to consider the wound certificate and observed that the claimants have sustained only simple injuries and awarded only a sum of Rs.5,000/- as total compensation towards pain and suffering.

6. Heard the learned counsel for the appellants as well as the learned counsel for the third respondent and perused the materials available on record.

7. On a perusal of the records, it is seen that the claimants were working as coolie and they travelled as unauthorized passengers in a tempo. Apart from that, the said vehicle which involved in the accident is meant for the purpose of carrying goods and the policy was also taken to that effect.



But contrary to the terms and conditions of the policy, the said vehicle was used for carrying the passengers.

8. The tribunal has also observed the fact that no documents were produced by the claimants to prove that the injuries sustained by them were caused only due to the said accident, hence awarded a sum of Rs. 5000/- towards pain and suffering, since the injuries sustained by them are simple in nature.

9. Though this Court does not differ with the discussion made by the tribunal, by considering the nature of injuries sustained by the claimants, inclined to enhance the sum awarded by the tribunal. Accordingly, this Court enhance the sum awarded under the head 'Pain and Suffering' from Rs.5,000/- to Rs.15,000/-. The enhanced amount shall carry the rate of interest at 7.5% per annum.

10. In view of the above enhancement, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed, if any.

11. The respondents 1 and 2 are directed to deposit the enhanced award amount in respect of the above appeals as per the modified award passed by this Court, with interest and costs, as apportioned by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon. The claimants are directed to pay the necessary Court Fee, if any, on the enhanced compensation.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The (Additional District and Sessions Judge)
Motor Accidents Claims Tribunal
(Fast Track Court No.II), Coimbatore.

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