

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3349 of 2013
and MP.No.1 of 2013
and MP.No.1 of 2015

The Branch Manager,
M/s.Oriental Insurance Co Ltd.,
No.401/2F Swastic Mannadi Arcade
SC Road, Opp to Seshadripuram Police Station,
Bangalore - 560 020.

... Appellant/2nd Respondent

Vs.

1. C.Kannaiyan ...First Respondent/Petitioner

2. Shiva Reddy. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.390 of 2013 dated 14.06.2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.J.Chandran
For Respondents : Mr.Mukund R.Pandiyan
R2 - Not ready notice

J U D G M E N T

The appellant/insurance company challenged the judgment and decree made in MCOP.No.390 of 2013 dated 14.06.2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

2. The case of the claimant before the Tribunal is that on 11.05.2002 at about 6.30pm the claimant was travelling in the Tempo bearing Reg.No.KA04-A-5567 as a loading and unloading coolie. The tempo was proceeding near Jannanahalli Gate NH4 road in Mulubagal to Kolar National Highway, the driver of the tempo drove the tempo in a rash and negligent manner and while overtaking a lorry, came in the right side, lost his control and dashed against a Hero Honda bike which was coming in the opposite direction and dashed on the road side tree. Due to the impact, three persons who travelled in the said motor cycle were

died on the spot. The claimant travelled in the tempo as workman sustained grievous injuries in his left and right legs and other multiple injuries. The Mulbagal police registered a case under Section 279, 337 and 338 of IPC against the driver of the tempo.

3. The case of the second respondent/insurance company denied all the allegations contained in the claim petition and submitted that the tempo driver drove the vehicle on extreme left side of the Jammanahalli road NH4 Road in Mulbagal to Kolar National Highway in a moderate speed by observing all road rules, the bike coming from the opposite direction without any signal tried to cross the road. On seeing the bike, the driver applied sudden brake to avoid accident, inspite of his effects due to the negligent act of the motorist the accident occurred. Therefore, the negligent can be attributed on the part of the motorist.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P7. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company mainly contended that the tribunal failed to consider the inconsistency of pleading, oral and documentary evidence, the fact that eight persons travelled in the goods vehicle as per police records which is towards violation of policy conditions.

7. The learned counsel appearing for the first respondent/claimant submitted on a careful perusal of Ex.P3/discharge summary reveals that CMC Hospital finally diagnosis - open infected comm united-supra condylar fracture right femur. The expert found that the fracture in the femur bone was the non union with malunited fracture right knee femur, due to the stiffness occurred in the leg the claimant has to walk by limping, therefore, the claimant was not able to walk for a long distance or stand for a long time. The claimant was not able to sit, squate in the floor.

8. From the available records, it is seen that the tribunal has failed to consider the aspects that eight persons travelled in the tempo at the time of accident and sustained injuries which is in total violation of policy conditions. The Tribunal has recorded that the insurance company has not proved this aspect through any valid documents, fixed the liability on the part of the insurance company to pay the compensation. Hence,

this Court is inclined to reduce the quantum of compensation awarded to the claimant on various heads.

9. This Court after considering the material factors relevant for determination of just and fair compensation is inclined to reduce the compensation as stated below, the revised compensation on the various heads are as follows :-

Sl.No.	Heads	Amount
1	Loss of earning capacity (3000x12x13/4 = Rs.1,17,000)	1,17,000
2	Pain and sufferings	30,000
3	Nutrition and transportation	30,000
4	Partial loss of income	27,000
5	Future medical expenses	25,000
6	Medical expenses	8,957
7	Attendant charges	5,000
	Total	2,42,957

10. The compensation of Rs.4,01,757/- is reduced to Rs.2,42,957/- rounded off to Rs.2,43,000/-. The Appellant/Insurance Company is directed to deposit the award amount within eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application. The judgment of the trial Court remains unaltered in other respects.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

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Sub Assistant Registrar

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To The Motor Accident Claims Tribunal,
Special Sub Judge, Krishnagiri.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 7781

+1cc to Mr.Mukund R Pandian, Advocate, S.R.No. 8376

C.M.A.No.3349 of 2013

SPD(CO)
GN(20/04/2021)