

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1083 of 2011

Backiyaraj

... Appellant/Petitioner

..Vs..

1.Arivukadal

2.The Branch Manager,
New India Assurance Company Limited,
Neela South Street,
Nagapattinam Tlk. and District. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 23.12.2010 passed in M.C.O.P.No. 120 of 2010 on the file of the Motor Accidents Claims Judge and Chief Judicial Magistrate at Nagapattinam.

For Appellant : Mr.N.Gnanalingam

For Respondents : Mr.K.J.Vinod for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in M.C.O.P.No.120 of 2010 dated 23.12.2010, on the file of the Chief Judicial Magistrate, Nagapattinam. The appellant/claimant filed the above claim petition seeking for a compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 19.06.2009.

2.The brief facts of the case of the appellant/claimant in nutshell:

On 19.06.2009, the appellant/claimant was riding his Bajaj Discover motorcycle bearing Registration No. TN 51 E 4497 on the Collector Office road, Nagapattinam. When he was nearing Velippalayam Thambidurai Park, a speeding tractor bearing Registration No. TN 51 C 8825 belonging to the first respondent hit the two wheeler driven by the appellant/claimant, as a result of which, the appellant/claimant sustained fracture on

his right thigh, right knee, right leg and also sustained fracture on his right femur, Tibia and fibula. He was immediately rushed to the Government Hospital at Nagapattinam from where he was referred to Thanjavur Medical College Hospital.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the tractor bearing Registration No. TN 51 C 8825 belonging to the first respondent was the cause of the accident and that since the said tractor was insured with the second respondent/New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

4. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.1,34,200/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Aggrieved over the said quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of compensation.

5. Mr. N. Gnanalingam, learned counsel appearing for the appellant would contend that the appellant/claimant has sustained compound II fracture of shaft of femur right side and interlocking with nailing was also done in the hospital and that the Tribunal is wrong in awarding a compensation of Rs.1,34,200/- especially when the appellant/claimant is a fisherman. He would further contend that the doctor has assessed the partial permanent disability as 74% and it was also found that on account of the fracture of the bones, there is a restriction of movement in the appellant/claimant's right leg compared with his left leg. Therefore he would contend that the award amount should be enhanced.

6. Per contra, Mr. K. J. Vinod, learned counsel appearing for the second respondent would contend that the Tribunal has awarded the compensation based on the prevailing legal principles at the time of passing the order, and therefore, there is no necessity to upset the award passed by the Tribunal.

7. A perusal of the records shows that the appellant/claimant has sustained compound II fracture of shaft of femur right side and there is also a malunion of bones, even though interlocking of bones by nailing was done by the doctors. Therefore, in the opinion of this Court, awarding a sum of Rs.1,11,000/- towards partial permanent disability is very meagre, especially when the appellant/claimant is a fisherman by profession. Therefore, a sum of Rs.1,48,000/- (74% x 2000) is awarded towards partial permanent disability. Apart from this amount, the appellant/claimant is entitled to a sum of Rs.5,000/-,

Rs.5,000/- and Rs.10,000/- towards transportation charges, extra nourishment and pain and sufferings respectively. The appellant/claimant has produced medical bills to the tune of Rs.12,202/- and therefore, he is entitled to this amount. Apart from this amount, a sum of Rs.2,000/- is awarded towards attender's charges. The Tribunal has not awarded any amount under the head future medical expenses and so, a sum of Rs.15,000/- is awarded to the appellant/claimant towards future medical expenses for which no interest would be awarded. The details of the amount awarded to the appellant/claimant is as follows:

S.No.	Head	Amount granted
1.	Partial permanent disability	Rs.1,48,000/-
2.	Transportation	Rs.5,000/-
3.	Extra nourishment	Rs.5,000/-
4.	Pain and sufferings	Rs.10,000/-
5.	Medical bills	Rs.12,202/-
6.	Attender's charges	Rs.2,000/-
7.	Future medical expenses	Rs.15,000/-
Total		Rs.1,97,202/-

Thus, the appellant/claimant is entitled to a sum of Rs.1,97,202/-. It is represented that the second respondent had already deposited the entire award amount passed by the Tribunal. Therefore, the second respondent is directed to deposit the enhanced compensation together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. No interest is awarded for the amount under the head "future medical expenses" (i.e., for Rs.15,000/-). On such deposit being made by the second respondent, the appellant/claimant is entitled to withdraw the entire amount immediately.

8. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
Nagapattinam.

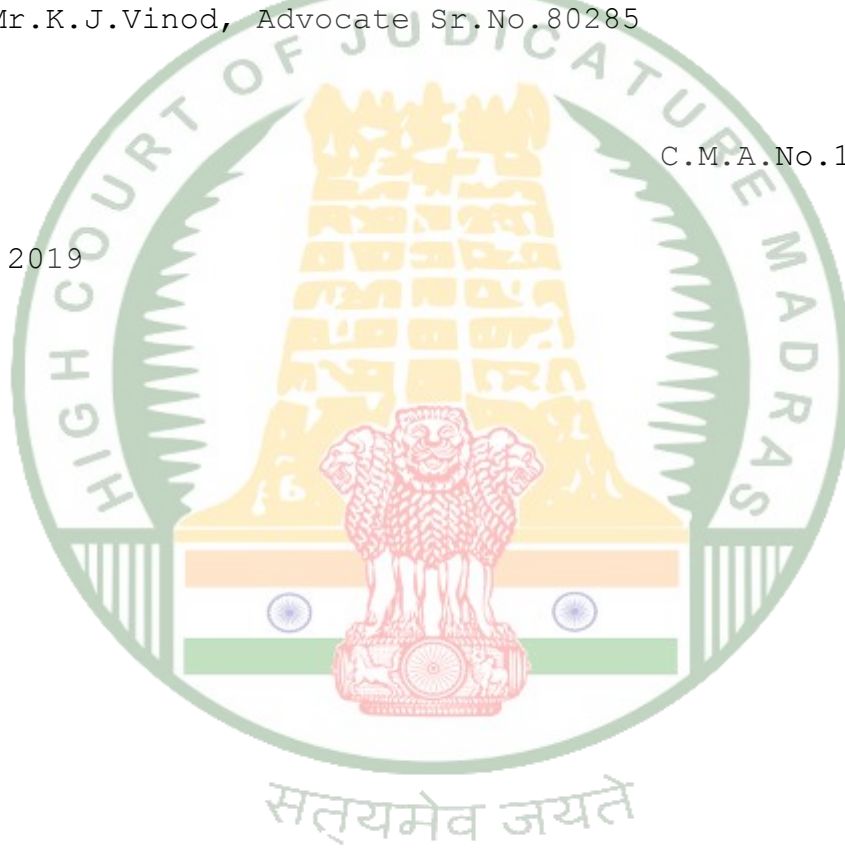
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+1 cc to Mr.N.Gnanalingam, Advocate Sr.No.80153

+1 cc to Mr.K.J.Vinod, Advocate Sr.No.80285

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VGI (CO)
CSL/23.01.2019



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