

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3787 of 2011

1.A.Kumar ...Appellant/Claimant
vs.

1.A.Divyananthan
(Ist Respondent remained ex-parte in the
trial court)

2.National Insurance Co. Ltd.,
No.751, Anna Salai, 2nd Floor,
Chennai - 600 002. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the quantum of compensation awarded on 09.06.2011 in M.C.O.P.No.4712 of 2006 by the VI Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : M/s.N.M.Muthurajan

For 2nd Respondent : M/s.S.Vadivel

First respondent : Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.4712 of 2006 on the file of the VI Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2. The appellant/claimant filed a claim petition in M.C.O.P.No.4712 of 2006 under section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 16.01.2006.

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

On 16.01.2006, the appellant/claimant was riding his Motor cycle bearing registration No. TN-09-AJ-3264 along North Usman Road and at about 18.30 hours, a speeding motor cycle bearing registration No.TN-09-AL-9065 came from the opposite direction

and hit his motor cycle, as a result of which, the appellant/claimant sustained grievous injuries. According to him, the rash and negligent driving of the rider of the motor cycle bearing registration No.TN-09-AL-9065 was the cause of the accident and that since the motor cycle was insured with the 2nd respondent, both of them are jointly and severally liable to pay a compensation of Rs.5,00,000/- to the claimant.

4. In the trial court, the first respondent, the owner of the motor cycle remained absent and was set exparte and the 2nd respondent filed a counter affidavit denying all the allegations of the claimant.

5.The learned VI Judge, Motor Accident Claim Tribunal, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.1,13,500/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the 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 enhancement of compensation amount.

6.M/s.N.M.Muthurajan, learned counsel appearing for the appellant would contend that the trial court has awarded only a sum of Rs.13,500/-, for loss of income, especially when the leave certificate (Ex.P7) issued by the Proprietor of Sri Vinayaga Engineering Company clearly shows that the appellant/claimant was unable to attend to his work continuously for a period of 6 months. It is pertinent to point out that appellant/claimant did not examine the person, who has issued the leave certificate (Ex.P7) to prove the contents there on. Therefore, considering the nature of injury, the trial court has taken up 3 months for calculating loss of income, which cannot be faulted with. However, the trial court awarded a sum of Rs.4000/- and Rs.3000/- towards "transportation expenses" and "extra nourishment" respectively, which required to be enhanced to Rs.5,000/- each. Apart from this amount, a sum of Rs.25,000/- is awarded towards 'pain and sufferings'. In the instant case, the appellant /claimant has sustained Grade-I compound fracture of both bones on his right leg, and Dr.K.J.Mathiazhagan (PW2) has assessed the partial permanent disability as 35% and issued disability certificate Ex.P8. The trial court has rightly awarded a sum of Rupees 70,000/- towards partial permanent disability and in my opinion, this award amount need not be disturbed.

7. Thus the revised compensation awarded under various heads is extracted hereunder:

No.	Head	Amount granted
1.	Loss of income for three months rate of Rs.4500/-	Rs.13,500/-
2.	Transportation	Rs.5000/-
3.	Extra nourishment	Rs.5000/-
4.	Damage of clothes	Rs.1000/-
5.	Medical expenses	Rs.2000/-
6.	Pain and sufferings	Rs.25,000/-
7.	Disability of 35% at Rs.2000/- per percentage	Rs.70,000/-
Total		Rs.1,21,500/-

The afore said amount shall carry interest at the rate of 7.5% per annum.

8. In the result,

(i) The appeal is allowed in part. No costs.

(ii) The appellant/claimant is entitled to a compensation of Rs.1,21,500/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The second respondent/ insurance company is directed to deposit the enhanced compensation of Rs.1,21,500/- together with interest at the rate of 7.5% per annum, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent/ Insurance company, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

mst

To

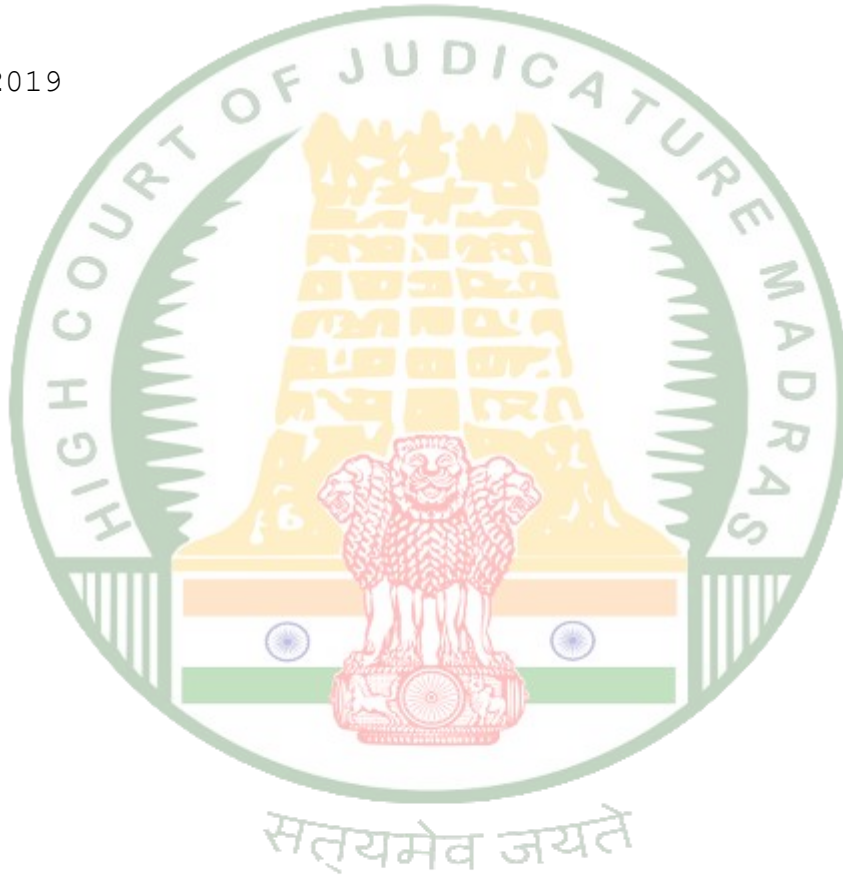
1. The VI Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

+1cc to M/s.N.M.Muthurajan, Advocate sr.no.83257

+1cc to M/s.S.Vadivel, Advocate sr.no.83172

C.M.A.No.3787 of 2011

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