

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1272 of 2007

United India Insurance Co. Ltd.,
Cuddalore.

...Appellant/2nd Respondent

Vs.

1.Viswanathan

...1st Respondent/Petitioner

2.Prema

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 31.08.2006 passed in MCOP.No.269 of 2005, on the file of the Motor Accidents Claims Tribunal / Principal Subordinate Court, Cuddalore.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : No appearance

J U D G M E N T

The United India Insurance Company Limited, the second respondent in MCOP.No.269 of 2005 on the file of the Motor Accidents Claims Tribunal / Principal Subordinate Court, Cuddalore has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The claimant filed the above claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 10.11.2004.

2. The case of the claimant is that on 10.11.2004, at about 11.00 am, when he was riding his bicycle from Pattampakkam to Kozhipakkam, near Mariamman Koil, a speeding mini bus bearing Registration No.TN 31 C 8626 belonging to the second respondent and insured with the present appellant, hit the bicycle, as a result of which, he was thrown out and sustained grievous injuries all over his body. According to the claimant, the accident took place due to the rash and negligent driving of the

driver of the mini bus bearing Registration No. TN 31 C 8626, belonging to the second respondent and that since the said mini bus was insured with the present appellant, both the owner and the insurer are jointly and severally liable to pay compensation to him.

3. The second respondent, owner of the mini bus remained absent before the Tribunal and therefore, she was set ex-parte. The present appellant / United India Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Principal Subordinate Judge, Cuddalore after analysing the evidence on record, awarded a compensation of Rs.3,08,000/- together with interest at the rate of 7.5% per annum. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant contended that when the claimant has not even filed discharge summary to prove the injuries sustained by him, the Tribunal has awarded an exorbitant amount of Rs.3,08,000/- and therefore, he prayed for scaling down the compensation.

5. No appearance on behalf of the respondents.

6. It is pertinent to point out that the claimant has not filed discharge summary issued by any Hospital to prove the injuries sustained by him. However, the wound certificate (Ex.A3) issued by Dr.Sivasubramanian (PW2) shows that the claimant had sustained fracture of his sixth and seventh ribs (left chest). It is also to be noted that Dr.Sivasubramanian (PW2) who issued the wound certificate (Ex.A3) is not the doctor who gave treatment to the claimant and he has not also furnished detailed calculation to show as to how he arrived at 40% disability. In the facts and circumstances of the present case, partial permanent disability is fixed at 20% and a sum of Rs.1,000/- per percentage of disability is awarded, which would come to Rs.20,000/-. In the claim petition, the claimant has contended that he was earning a sum of Rs.8,000/- per month. However, he did not file income proof. The accident took place in the year 2004 and therefore, the notional income of the claimant is fixed at Rs.3,000/- per month. Since he has sustained fracture of his sixth and seventh ribs (left chest), he would not have been in a position to attend to his work atleast for one month and therefore, a sum of Rs.3,000/- (Rs.3,000/- x 1 month) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial Permanent Disability	Rs.20,000/-
2.	Pain and Suffering	Rs.5,000/-
3.	Transportation	Rs.5,000/-
4.	Extra Nourishment	Rs.5,000/-
5.	Attender's charges	Rs.1,000/-
6.	Loss of income	Rs.3,000/-
7.	Damage to clothes	Rs.500/-
Total		Rs.39,500/-

Thus the quantum of compensation awarded by the Tribunal is scaled down from Rs.3,08,000/- to Rs.39,500/- which would carry interest at the rate of 7.5% per annum.

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.3,08,000/- to Rs.39,500/-

(iii) The appellant / United India Insurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.39,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.269 of 2005 on the file of the Motor Accidents Claims Tribunal / Principal Subordinate Judge, Cuddalore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/ claimant is at liberty to withdraw the same after following due process of law.

(v) The appellant / United India Insurance Company Limited is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

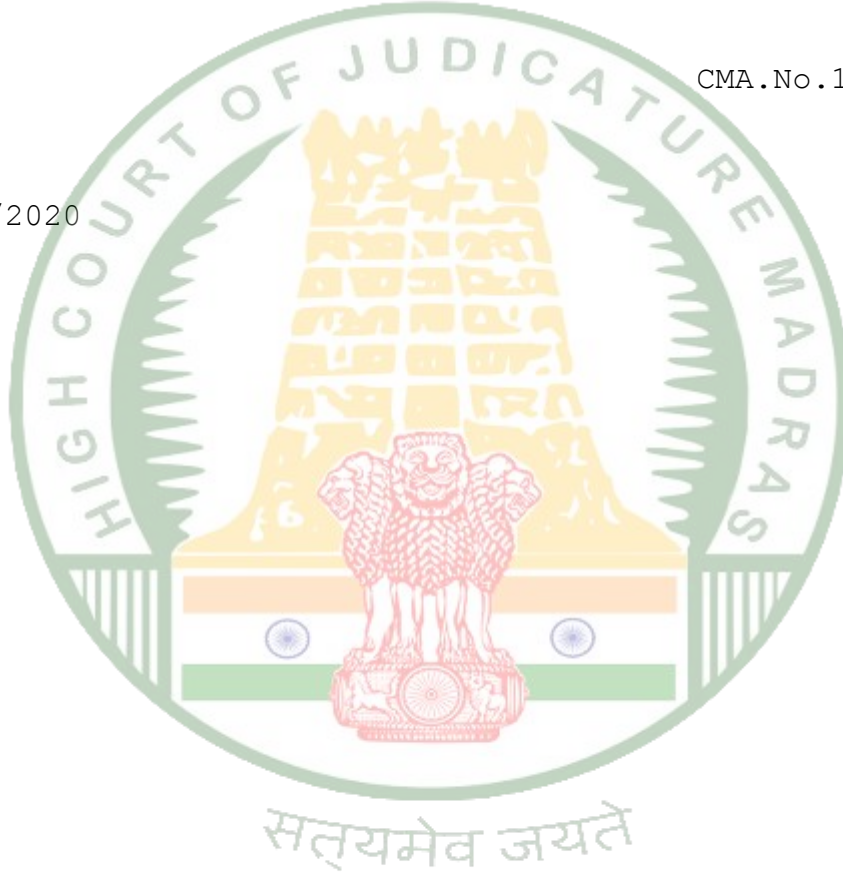
To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.

+lcc to Mr.M.J.Vijayaraghavan, Advocate Sr.82082

CMA.No.1272 of 2007

ssd[co]
srg 17/03/2020



WEB COPY