

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1477 of 2006

K.Murugesan

... Appellant/Petitioner

..Vs..

1.R.Vasuki

2.The United India Insurance  
Company Limited,  
7, S-4, Salem Main Road,  
Sankari, Salem.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 16.06.2005, passed in M.C.O.P.No.1235 of 2002, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.T.Ravichandran for R2  
R1- No appearance

JUDGMENT

The appellant is the claimant in M.C.O.P.No.1235 of 2002 on the file of the Chief Judicial Magistrate, Namakkal. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 24.01.2000, at about 07.50 hours, when he was riding his two wheeler bearing Registration No.TN I 8117 on Thiruchengodu - Erode Road.

2.According to the appellant/claimant, when he was nearing a farm, a speeding bus bearing Registration No. TN 27 V 5335 belonging to the first respondent and insured with the second respondent, hit his two wheeler, as result of which, he sustained injuries all over his body. He further contended that

the rash and negligent driving of the driver of the bus bearing Registration No. TN 27 V 5335 was the cause of the accident and that, since, the said bus was insured with the second respondent, both of them are jointly and severally liable to pay compensation to him.

3.The owner of the bus bearing Registration No. TN 27 V 5335 remained absent before the tribunal and therefore he was set ex-parte. The second respondent United India Insurance Company Limited, Sangagiri contested the claim petition. The learned Chief Judicial Magistrate, Namakkal after analysing the evidence on record, awarded a compensation of Rs.14,270/- together with interest at the rate of 7.5% per annum to the appellant/claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Mr.N.Manokaran, learned counsel appearing for the appellant/claimant would contend that when the appellant/claimant has sustained communitted fracture of Right Patella and fracture of left 5<sup>th</sup> rib, the tribunal has awarded a very meagre amount of Rs.14,270/- to the appellant/claimant. He would further contended that no amount was awarded towards 'pain and sufferings', 'extra nourishment', 'loss of income', 'transportation' and 'loss of amenities' and therefore, the award passed by the tribunal should be enhanced.

6.A perusal of the wound certificate (Ex.A2) clearly shows that the appellant/claimant has sustained communitted fracture of Right Patella and fracture of the left 5<sup>th</sup> rib. Dr.S.Natesan, Consultant Ortho surgeon, LKM Hospital had opined that the injuries sustained by him are grievous in nature and therefore, the percentage of disability suffered by him is fixed at 10% and a sum of Rs.10,000/- is awarded for partial permanent disability ( awarding Rs.1,000/- per percentage).

7.Apart from that, the appellant/claimant is entitled a sum of Rs.5,000/-, Rs.2,000/-, Rs.2,000/-, Rs.5,000/- and Rs.3,000/- towards 'pain and sufferings', 'extra nourishment', 'attender's charges', 'loss of amenities' and 'transportation' respectively. It is contended by the appellant/claimant that he was working as an operator of JCB, earning a sum of Rs.5,000/-. Since no income proof was adduced by him, his notional income is fixed at

Rs.3,000/- per month since the accident took place in the year 2002. On account of the accident, the appellant/claimant would not have been in a position to attend to his regular work atleast for a period of three months and therefore, he is entitled a sum of Rs.9,000/- towards loss of income. The appellant/claimant has produced medical bills to the tune of Rs.6,349/- and therefore, he is entitled to the said amount. The various heads under which the appellant/claimant is entitled to compensation is extracted hereunder:

| S.No | Head                         | Amount granted |
|------|------------------------------|----------------|
| 1.   | Partial permanent disability | Rs.10,000/-    |
| 2.   | Pain and sufferings          | Rs.5,000/-     |
| 3.   | Transportation               | Rs.3,000/-     |
| 4.   | Extra nourishment            | Rs.2,000/-     |
| 5.   | Loss of income               | Rs.9,000/-     |
| 6.   | Medical expenses             | Rs.6,349/-     |
| 7.   | Loss of amenities            | Rs.5,000/-     |
| 8.   | Attender's charges           | Rs.2,000/-     |
|      | Total                        | Rs.42,349/-    |

Thus, the appellant/claimant is entitled to a sum of Rs.42,349/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

8. In the result,

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

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.14,270/- to Rs.42,349/-, which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent, the United India Insurance Company Limited, is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) 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 M.C.O.P.No.1235 of 2002, on the file of the Motor Accident Claims Tribunal, the Chief Judicial Magistrate, Namakkal within

a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr/mbi

To

The Chief Judicial Magistrate, Motor Accidents Claims Tribunal,  
Namakkal.

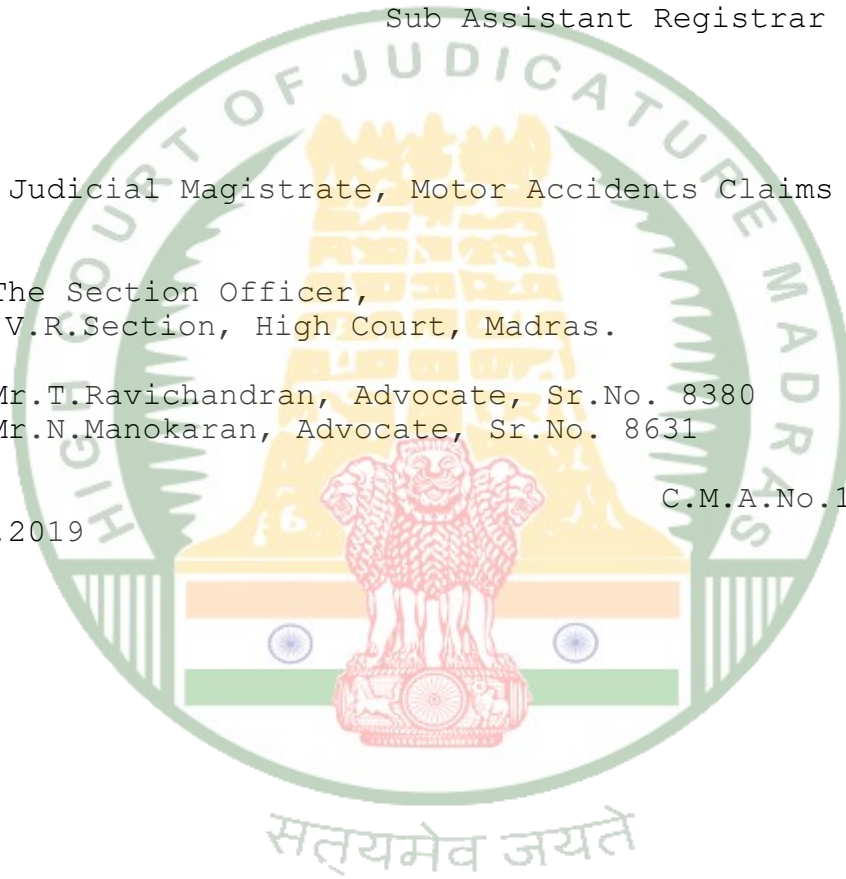
Copy To: The Section Officer,  
V.R.Section, High Court, Madras.

+1 cc to Mr.T.Ravichandran, Advocate, Sr.No. 8380

+1 cc to Mr.N.Manokaran, Advocate, Sr.No. 8631

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CSL/03.07.2019



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