

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3780 of 2004

Veeraiyya @ Lenin

...Appellant/Claimant

.Vs.

1.M.Siva Gandhi

2.National Insurance Company Limited,
Villupuram.

... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 08.10.2002 passed in MCOP.No.115 of 2000 on the file of the Motor Accident Claims Tribunal / II Additional Subordinate Court, Villupuram.

For Appellant : Mr.A.Thamizharasan

For Respondents : Mr.D.Bhaskaran for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.115 of 2000 on the file of the Motor Accident Claims Tribunal / II Additional Subordinate Court, Villupuram. He filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 praying to award compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 27.06.1999.

2. The case of the claimant is that on 27.06.1999, at about 08.00 pm, when he was riding his two wheeler TVS 50, on Chinthamani - Villupuram National Highways, a lorry bearing Registration No. TNT 1634 belonging to the first respondent and insured with the second respondent came on the opposite direction rashly and negligently and hit the claimant's vehicle, as a result of which, he sustained injuries all over his body. The further contention of the claimant is that he took treatment at Government Hospital, Villupuram from 27.06.1999 to 11.07.1999 and a plastic surgery was also performed on his face. The

specific contention of the claimant is that the accident took place due to the rash and negligent driving of the driver of the first respondent and that since the first respondent's vehicle was insured with the second respondent, the National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

3. The learned II Additional Subordinate Judge, Villupuram vide his decree and Judgment dated 08.10.2002, awarded a compensation of Rs.37,500/- together with interest at the rate of 9% per annum to the claimant. Not satisfied with the quantum of award passed by the tribunal, the claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.A.Thamizharasan, learned counsel appearing for the appellant / claimant would contend that even though Dr.Ravindher (PW2) Medical Officer, Ayanavaram, Chennai had issued a partial permanent disability certificate (Ex.P10) stating that the claimant has suffered partial permanent disability of 45%, the tribunal had awarded only a sum of Rs.10,000/- for the injuries sustained by the claimant. He would further contend that no amount was awarded towards transportation and extra nourishment. Therefore he would contend that the award amount passed by the tribunal has got to be enhanced.

5. No appearance on behalf of the first respondent.

6. Per contra, Mr.D.Bhaskaran, learned counsel appearing for the second respondent / National Insurance Company Limited contended that the tribunal had awarded a sum of Rs.6,500/- for the damages caused to the TVS 50 in which the claimant was riding on the date of the accident, even though, no documentary evidence was adduced by the claimant to show that he was the owner of the TVS 50 on the date of the accident. He would therefore contend that no amount can be awarded for the damages caused to the TVS 50.

7. A perusal of the partial permanent disability certificate (Ex.P10) shows that the claimant has suffered partial permanent disability of 45%. However, Dr.Ravindher (PW2) in his evidence had deposed that he assessed the disability as 30% for the injury sustained by the claimant on his left side of his face and 15% for the injury sustained by him in his left wrist. It is pertinent to point out that a copy of the wound certificate (Ex.P4) issued by the Assistant Surgeon, Government Hospital, Villupuram shows that the claimant has sustained the following injuries:

- (1) Lacerated injuries over the forehead and knees measuring 6 x 1 x 1/2 cm with red blood clots.
- (2) Lacerated injury over the right thigh measuring 6 x 1 x

1 cm with red blood clots.

(3) Lacerated injury over the right elbow measuring 2 x 1 x 1 cm.

In the opinion of the Assistant Surgeon, the injury no.1 is grievous in nature while the injuries nos. 2 and 3 are simple in nature. On the contrary, Dr.Ravindher (PW2) in his partial permanent disability certificate (Ex.P10) had observed that the claimant has sustained injury in his skull and a fracture on his left wrist. The injuries mentioned in the wound certificate (Ex.P4) do not match with the injuries mentioned in the partial permanent disability certificate (Ex.P10) and therefore, the tribunal was right in discarding the evidence of PW2. The tribunal had awarded a sum of Rs.26,000/- for the injuries sustained by the claimant which in the opinion of this Court cannot be said to be low. However, the tribunal has not awarded any amount towards transportation and extra nourishment and therefore a sum of Rs.5,000/- each is awarded towards the same.

8. The learned counsel appearing for the appellant / claimant also contended that the claimant was a mason, earning a sum of Rs.120/- per day on the date of the accident. Considering the nature of injuries sustained by the claimant, a sum of Rs.9,000/- (Rs.3,000/- x 3 months) is awarded towards loss of income. Though it is contended by the learned counsel appearing for the second respondent / National Insurance Company Limited that the claimant did not adduce any evidence to show that he was the owner of the TVS 50 on the date of the accident, the claimant has filed a delivery receipt to show that he has purchased the TVS 50 and therefore, the sum of Rs.6,500/- awarded for the damages caused to the TVS 50 cannot be said to be wrong.

9. The award passed by the tribunal under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	For injuries sustained by the claimant	Rs.26,000/-
2.	Pain and sufferings	Rs.5,000/-
3.	Damages caused to the TVS 50	Rs.6,500/-
Total		Rs.37,500/-

10. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	For injuries sustained by the claimant	Rs.26,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Loss of income	Rs.9,000/-
6.	Damages caused to TVS 50	Rs.6,500/-
Total		Rs.61,500/-

Thus the compensation awarded by the tribunal is enhanced from Rs.37,500/- to Rs.61,500/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

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

(ii) The compensation awarded by the tribunal is enhanced from Rs.37,500/- to Rs.61,500/-.

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

(iv) The second respondent, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.61,500/- (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.115 of 2000 on the file of the Motor Accident Claims Tribunal / II Additional Subordinate Court, Villupuram within a period of four weeks from the date of receipt of a copy of this order.

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

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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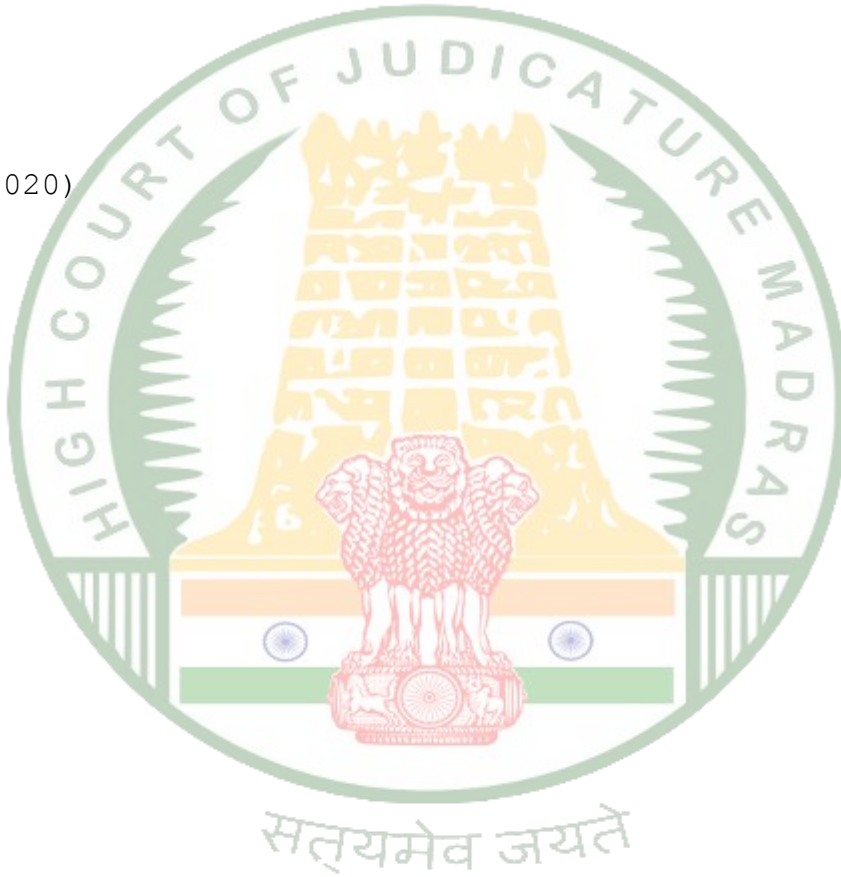
To

The Motor Accidents Claims Tribunal,
The II Additional Subordinate Court,
Villupuram.

+1 CC to Mr.D.Bhaskaran, Advocate sr 75942.
+1 CC to Mr.A.Thamizharasan, Advocate sr 75978.

CMA.No.3780 of 2004

SJ(CO)
SP(05/06/2020)



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