

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2387 of 2009

M.Nageshwaran

...Appellant/Petitioner

vs.

1.M.Raja

2.The Branch Manager,

United India Insurance Co. Ltd.,

Motor 3rd part cell,

38, Anna salai, Chennai - 2. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.08.2008 passed in MCOP.No.510 of 2003 on the file of the Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.3), Thiruvelllore.

For Appellant : Mr.A.S.Vijay Anand

For Respondents : Mr.C.Paranthaman for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.510 of 2003 on the file of the Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.3), Thiruvelllore. He filed the claim petition under Section 166 (3) of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 04.09.2003.

2. The case of the claimant is that on 04.09.2003, at about 08.30 pm, when he was returning to his house, after completion of his work, in a bicycle, a speeding motorcycle bearing Registration No. TN 20 V 7126 belonging to the first respondent and insured with the second respondent hit the bicycle, as a result of which, he sustained injuries all over his body. He was immediately rushed to the Government General Hospital, Thiruvelllore. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 20 V 7126 was the cause of the accident and that since the said motorcycle was insured with the United India Insurance Company Limited, both the owner as well as the

insurer are jointly and severally liable to pay compensation to him.

3. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.3), Thiruvellore after analysing the evidence on record, awarded a compensation of Rs.10,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.A.S.Vijay Anand, learned counsel appearing for the appellant / claimant contended that though the claimant had sustained fracture of his left temporal panetar bone and right ankle dislocation, the Tribunal opined that all the injuries sustained by the claimant are simple in nature and awarded a very meagre compensation of Rs.10,000/- to him. He therefore prayed for enhancement of compensation.

5. Per contra, Mr.C.Paranthaman, learned counsel appearing for the United India Insurance Company Limited drew the attention of this Court to the evidence of Dr.Thiyagarajan (PW2) and contended that the doctor had clearly deposed that he did not take X-ray before examining the claimant and that the percentage of disability assessed by Dr.Thiyagarajan (PW2) is also on the higher side.

6. In the instant case, the claimant had sustained a head injury and his right ankle was dislocated on account of the accident as evidenced by the discharge summary (Ex.P4) issued by the Government General Hospital, Thiruvellore. The claimant has also filed CT scan report of brain (Ex.P3) which shows that there was a fracture of left temporal panetar bone. The Tribunal without considering the CT scan report (Ex.P3) and the discharge summary (Ex.P4) had opined that the injuries sustained by the appellant / claimant are simple in nature. Such an observation made by the Tribunal definitely warrants interference by this Court, in the light of the medical records adduced by the claimant. Dr.Thiyagarajan (PW2) had assessed the partial permanent disability as 40%. It is a case of head injury and also right ankle fracture. The accident took place in the year 2003. Considering the year of the accident, awarding a sum of Rs.1,000/- per percentage of disability, in the opinion of this Court, would meet the ends of justice. The award passed by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.2,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
Total		Rs.59,500/-

7. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.10,000/- to Rs.59,500/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.59,500/- (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.510 of 2003 on the file of the Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.3), Thiruvellore 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.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court No.3,
Thiruvellore.

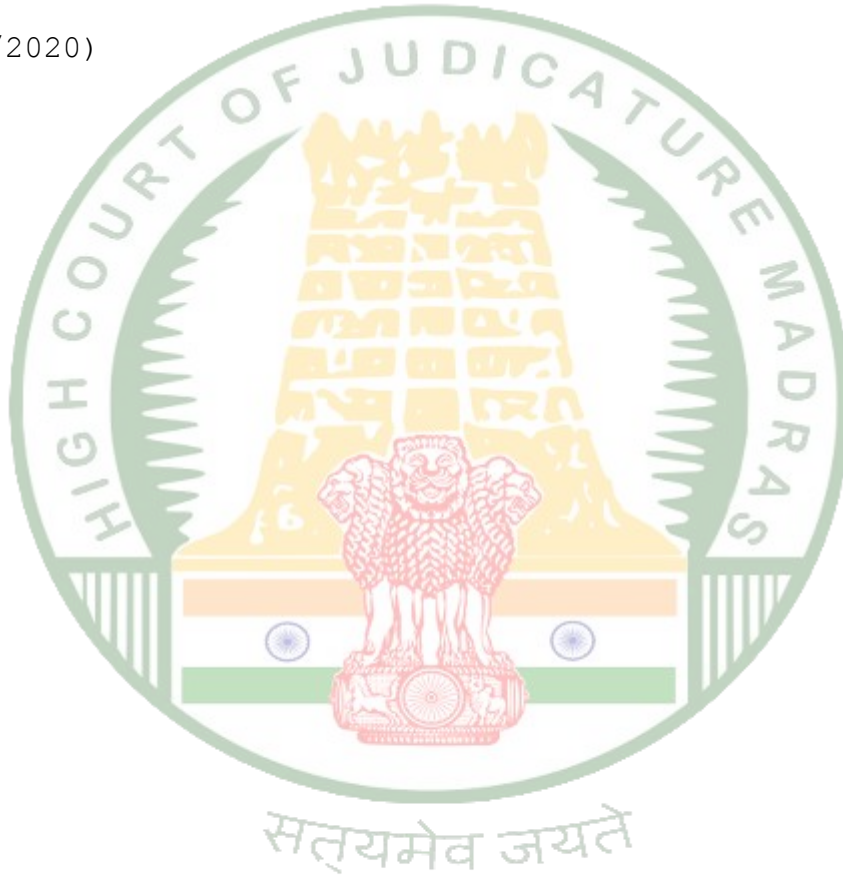
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.S.Vijay Anand, Advocate SR.No.83741

+1cc to Mr.C.Paranthaman, Advocate SR.No.83442

CMA.No.2387 of 2009

GP (CO)
GMY (21/02/2020)



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