

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 15.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA  
C.M.A.No.2502 of 2010

A.Kubendran

...Appellant/Claimant

vs.

1.Arihant Transport Agencies,  
Rams Building,  
F.No.A/9, 2<sup>nd</sup> Floor,  
No.21, Rajaannamalai Road,  
Chennai - 600 084.

2.United India Insurance Co. Ltd.,  
Divisional Office-XI,  
No.14, Whites Road,  
Sudarsan Building, 2<sup>nd</sup> Floor,  
Chennai - 600 014.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.07.2009 passed in M.C.O.P.No.125 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.P.Mani  
For R1 : No appearance  
For R2 : Mr.D.Bhaskaran

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.125 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Krishnagiri. He filed the 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 08.12.2005.

2. The case of the claimant is that on 08.12.2005, he was travelling as a passenger in a bus bearing Registration No.TN 24 1330 belonging to Vidyamandir Higher Secondary School, Utangarai on Mathur - Uthangarai National Highways. When the bus was nearing Kamalapuram junction road, a speeding lorry bearing Registration No.TN 01 U 0614 belonging to the first respondent and insured with the second respondent / United India Insurance Company Limited came on the opposite direction and hit the bus in which the claimant was travelling, as a result whereof, the claimant sustained injuries all over his body. According to the claimant, the rash and negligent

driving of the driver of the lorry bearing Registration No.TN 01 U 0614 was the cause of the accident and that since the said lorry was insured with the second respondent / United India Insurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation to him.

3.The first respondent / owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company, Salem, contested the claim petition and the learned Motor Accident Claims Tribunal / Principal Subordinate Judge, Krishnagiri, awarded a compensation of Rs.44,223/- together with interest at the rate of 7.5% per annum to the claimant. Not being 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, seeking enhancement of compensation.

4.Mr.P.Mani, learned counsel appearing for the appellant / claimant contended that though Dr.G.Ashok Kumar (P.W.11) assessed the partial permanent disability sustained by the claimant as 25%, the Tribunal has awarded a very meagre compensation of Rs.44,223/- especially when the claimant had sustained a fracture on his right hand and a plate was also fixed. He therefore prayed for enhancement of compensation.

5.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the second respondent / United India Insurance Company Limited contended that the Tribunal after considering all the aspects of the case has awarded a just compensation and therefore the same need not be disturbed at this stage.

6.No appearance on behalf of the first respondent. A perusal of the discharge summary (Ex.P10) shows that the claimant has sustained a fracture on his right hand and an operation was performed for fixing a plate. Dr.G.Ashok Kumar (P.W.11) assessed partial permanent disability as 25%. There is nothing to show that the claimant sustained functional disability on account of the accident and therefore multiplier method is not warranted. As far as the present case is concerned, the Tribunal has awarded only a sum of Rs.25,000/- towards partial permanent disability and the same can be enhanced to Rs.50,000/- considering the nature of injuries sustained by the claimant. Apart from the above amount, a sum of Rs.10,000/- is awarded towards pain and sufferings. It is contended that the claimant was working as a watchman earning a sum of Rs.4,000/- per month. On account of accident, he would not have been in a position to attend to his routine work atleast for three months and the loss of income is calculated as Rs.12,000/- ( Rs.4,000/- X 3 months). The award passed by this Court under various heads is extracted hereunder:

| S.No<br>. | Head                            | Amount granted by<br>this Court |
|-----------|---------------------------------|---------------------------------|
| 1.        | Partial permanent<br>disability | Rs.50,000/-                     |
| 2.        | Pain and sufferings             | Rs.10,000/-                     |
| 3.        | Medical expenses                | Rs.7,223/-                      |
| 4.        | Loss of income                  | Rs.12,000/-                     |
| 5.        | Extra nourishment               | Rs.5,000/-                      |
| 6.        | Transportation                  | Rs.5,000/-                      |
| 7.        | Attender's charges              | Rs.2,000/-                      |
| 8.        | Damage to clothes               | Rs.500/-                        |
| Total     |                                 | Rs.91,723/-                     |

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.44,223/- to Rs.91,723/-.

(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.91,723/- (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 M.C.O.P.No.125 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Krishnagiri 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(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,  
The Principal Subordinate Judge,  
Krishnagiri.

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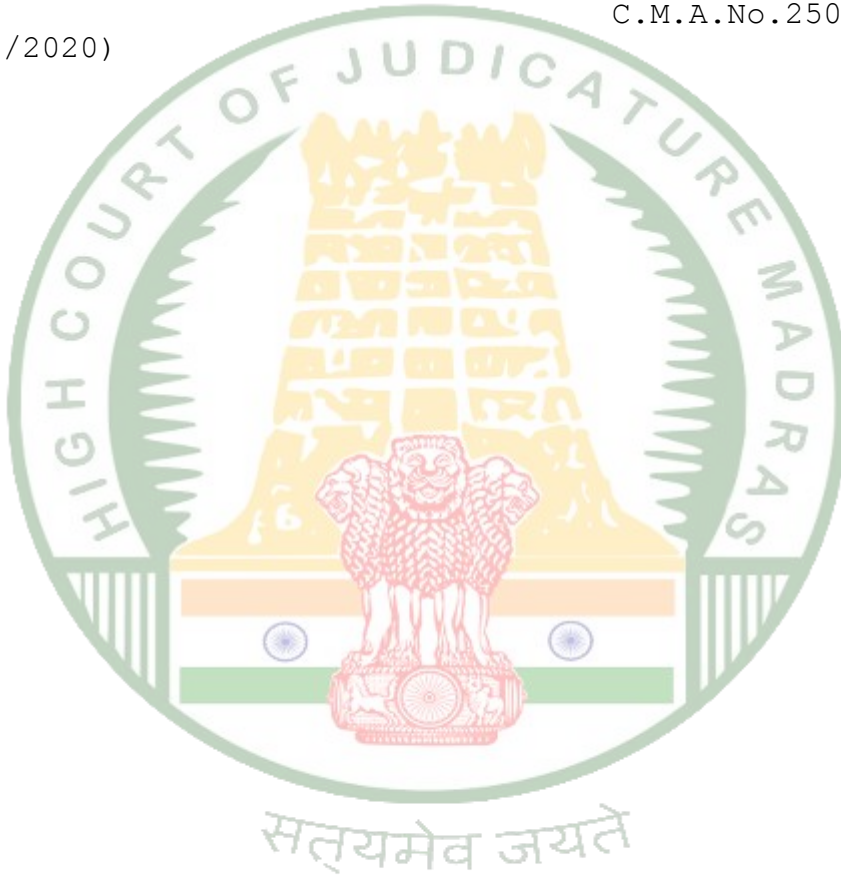
The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.D.Bhaskaran , Advocate SR.No. 86387

+lcc to Mr.P.Mani , Advocate SR.No. 86199

C.M.A.No.2502 of 2010

A.SK(21/07/2020)



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