

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.528 of 2009

C.Rajasekaran

...Appellant/Petitioner

.Vs.

1.S.Lawrence

2.IFFCO-TOKIO General Insurance Co. Ltd.,
Tulsi Chambers 3rd Floor,
195 TV Swamy road,
R.S.Puram, Coimbatore 641 002.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.11.2008 passed in MCOP.No.456 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Perambalur.

For Appellant : Mrs.C.Sangamithirai

For Respondents : Mr.J.Michael Viswasam for R2
No appearance for R1
R1-Exparte

JUDGMENT

The appellant is the claimant in MCOP.No.456 of 2007 on the file of the Motor Accidents Claims Tribunal / Principal District Court, Perambalur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 20.09.2006.

2. The case of the claimant is that on 20.09.2006, when he was riding TVS 50 Super XL bearing Registration No. TN 09 R 2164 on Padalur - Pudhukurichi road, a speeding motorcycle bearing Registration No. TN 49 B 0648 hit his motorcycle from behind, near Karaikuruku cross road, as a result of which, he was thrown out and sustained multiple injuries all over his body. According to the claimant, the rash and negligent riding of the

rider of the motorcycle bearing Registration No. TN 49 B 0648 was the cause of the accident and that since the same was insured with the second respondent, IFFCO-TOKIO General Insurance Company Limited, both of them are jointly and severally liable to pay a sum of Rs.4,00,000/- to him.

3. The first respondent, owner of the motorcycle bearing Registration No. TN 49 B 0648 remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, IFFCO-TOKIO General Insurance Company Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / Principal District Judge, Perambalur after analysing the evidence on record, awarded a compensation of Rs.1,03,200/- 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. Mrs. C. Sangamithirai, learned counsel appearing for the appellant/ claimant would contend that though the claimant had sustained a fracture of bone in his right ankle and right leg, the Tribunal has awarded a meagre amount of compensation to him. She would further contend that no amounts were awarded under the heads "pain and sufferings" and "extra nourishment".

5. Per contra, Mr. J. Michael Viswasam, learned counsel appearing for the second respondent / IFFCO-TOKIO General Insurance Company Limited contended that the accident took place in the year 2006 and the Tribunal had properly appreciated the evidence on record and awarded a just compensation, which need not be disturbed at this stage.

6. A perusal of the records shows that the claimant was a owner of Fly Ash Factory and it is contended by him that he was earning a sum of Rs.3,000/- per month. The discharge summaries (Ex.P2 and Ex.P3) shows that the claimant had sustained a fracture in his right ankle and 5th metatarsal bone and Dr. Saravanan (PW2) has also assessed the partial permanent disability as 37%. In the circumstances, awarding a compensation of Rs.2,000/- per percentage of disability in the opinion of this Court would meet the ends of justice. Therefore, a sum of Rs.74,000/- (37% disability x Rs.2,000/-) is awarded towards partial permanent disability. The award passed by the Tribunal is enhanced as detailed hereunder:

S.No.	Head	Amount granted
1.	Partial Permanent disability	Rs.74,000/-

S.No.	Head	Amount granted
2.	Pain and sufferings and mental agony	Rs.10,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Medical expenses	Rs.50,201/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.500/-
Total		Rs.1,46,701/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,03,200/- to Rs.1,46,701/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,03,200/- to Rs.1,46,701/-.

(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, IFFCO-TOKIO General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,46,701/- (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. 456 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Perambalur 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

To

The Motor Accidents Claims Tribunal,
The Principal District Court,
Perambalur.

Copy to

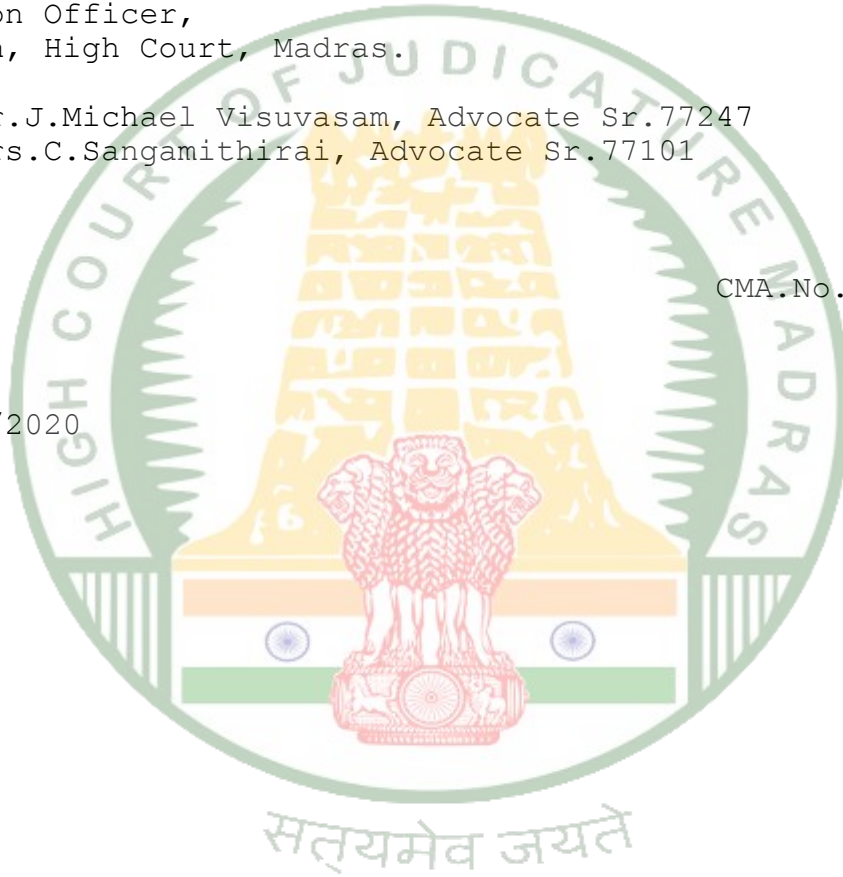
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.77247

+1cc to Mrs.C.Sangamithirai, Advocate Sr.77101

CMA.No.528 of 2009

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srg 05/06/2020



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