

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.983 of 2009

N.Thavamani

...Appellant/Petitioner
vs.

1.A.Basha
2.K.C.Mani
3.United India Insurance Co. Ltd.,
Rep. by its Branch Manager,
Pudhuchampalli,
Mettur - 3.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.09.2008 passed in MCOP.No.6 of 2004 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Mettur.

For Appellant : Mr.R.Nalliappan
For Respondents : Mr.C.Paranthaman for R3
No appearance for R1 and R2

JUDGMENT

The appellant is the claimant in MCOP.No.6 of 2004 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Mettur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,60,000/- for the injuries sustained by him in a road accident that took place on 23.07.2003.

2. The case of the claimant is that on 23.07.2003, at about 01.30 pm, when he was riding his motorcycle bearing Registration No.TN 33 B 3789 along Kolathur main road, a speeding lorry bearing Registration No. TN 38 A 8155 belonging to the second respondent and insured with the third respondent hit the motorcycle, as a result of which, he was thrown out and sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TN 38 A 8155 was the cause of the accident and that since the said lorry was insured with the United India Insurance Company Limited, both the owner and the insurer are

jointly and severally liable to pay compensation to him.

3. The learned Motor Accident Claims Tribunal / Subordinate Judge, Mettur after analysing the evidence on record, awarded a compensation of Rs.69,575/- 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.R.Nalliappan, learned counsel appearing for the appellant / claimant contended that though Dr.Krishnaswamy (PW3) had assessed the partial permanent disability sustained by the claimant as 26%, the Tribunal had reduced the same to 13% without assigning any valid reason. He would further contend that very meagre amounts were awarded under other heads and therefore prayed for enhancement of compensation.

5. Per contra, Mr.C.Paranthaman, learned counsel appearing for the United India Insurance Company Limited contended that the Tribunal had awarded a just compensation of Rs.69,575/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. A perusal of the discharge summary (Ex.A2) shows that the claimant had sustained a fracture of both bones left tibia lower third and interlocking nailing was also done on 24.07.2003. Dr.Krishnaswamy (PW3) after examining the claimant, had assessed the partial permanent disability as 26%. As rightly contended by the learned counsel appearing for the claimants, the Tribunal reduced the same to 13% without assigning any valid reason. Considering the nature of injuries sustained by the claimant, the partial permanent disability is fixed as 26%, as assessed by Dr.Krishnaswamy (PW3). Since there is no functional disability, applying multiplier method is not warranted as far as the present case is concerned. Therefore, 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:

WEB COPY

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.26,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Medical expenses	Rs.43,535/-
4.	Transportation	Rs.2,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.1,000/-
Total		Rs.89,535/-

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.69,575/- to Rs.89,535/-.

(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 third respondent / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.89,535/- (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.6 of 2004 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Mettur 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

True Copy

Sub-Assistant Registrar

mbi

To

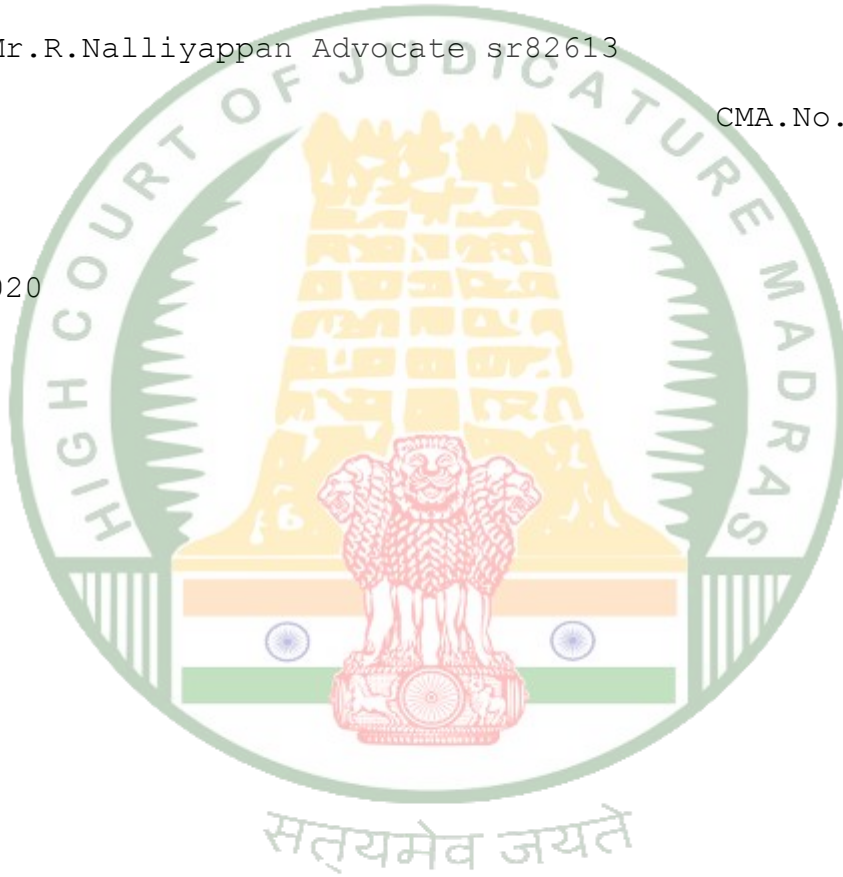
The Motor Accidents Claims Tribunal,
Subordinate Judge,
Mettur.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.R.Nalliyappan Advocate sr82613

CMA.No.983 of 2009

pm(co)
aa23/07/2020



WEB COPY