

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2780 of 2011

V.Siddhan ... Appellant/Petitioner

.Vs.

1.Muthu Baba

2.The New India Assurance Company Limited,
Divisional Office, Premier Complex,
Five Roads, Salem - 6.

3.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Division I, Ramakrishna Road,
Salem - 7.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.01.2011 passed in M.C.O.P.No.182 of 2006 on the file of the Motor Accident Claims Tribunal / II Additional Sub Court, Salem.

For Appellant : Mr.K.Kuppusamy
For R1 : No appearance
For R2 : Mrs.R.Sreevidhya
For R3 : Mr.D.Venkatachalam

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.182 of 2006 on the file of the Motor Accident Claims Tribunal / II Additional Sub Court, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 18.01.2005.

2. The case of the claimant is that on 18.01.2005, the claimant was travelling as a passenger in a bus bearing Registration No. TN 27 N 1057 belonging to the third respondent on Salem - Omalur road and at about 06.00 A.M., when the bus was nearing Karumbalai Railway Bridge, a speeding lorry bearing Registration No. TN 28 R 7749, belonging to the

first respondent hit the bus, 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 belonging to the first respondent was the cause of the accident and that since the lorry was insured with the second respondent/New India Assurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The first respondent/owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The learned II Additional Subordinate Judge / Motor Accidents Claims Tribunal, Salem, after analysing the evidence on record, awarded a compensation of Rs.50,000/- 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.

4. Mr.K.Kuppusamy, learned counsel appearing for the appellant/claimant contended that though Dr.S.R.Shanmugapriya (P.W.2) assessed the partial permanent disability of the claimant as 30%, the Tribunal without any valid reason, reduced the same to 10% and awarded very meagre compensation of Rs.20,000/- towards disability. He further contended that the claimant was a construction contractor earning a sum of Rs.7,500/- per month on the date of accident and that the Tribunal has not awarded any amount towards loss of income, medical bills, damage to clothes and attender's charges and prayed for enhancement of compensation.

5. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent / New India Assurance Company Limited contended that the Tribunal after considering all the aspects of the case has awarded a just compensation of Rs.50,000/- and therefore the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent.

7. A perusal of the case sheet (Ex.P2) shows that the claimant sustained a fracture on his nasal bone and the ENT specialist issued disability certificate stating that on account of the nasal bone deviation there is a partial permanent disability of 25%. The Tribunal after considering the injuries sustained by the claimant had fixed the disability at 10% by stating that there is no disfigurement of nose and awarded a sum of Rs.20,000/- for partial permanent disability. Therefore, the award passed by the Tribunal for partial permanent disability cannot be found fault with. The Tribunal further awarded a sum of Rs.5,000/- each under the head of transportation and extra nourishment and a sum of

Rs.20,000/- towards pain and sufferings. The claimant in the claim petition has stated that he was a construction contractor earning a sum of Rs.7,500/- per month on the date of accident. The claimant has not adduced any evidence to show that he was earning a sum of Rs.7,500/- per month. Since the accident took place in the year 2005, the notional monthly income of the claimant is fixed as Rs.6,000/-. On account of accident, he would not have been in a position to attend to his routine work atleast for one month and a sum of Rs.6,000/- is awarded towards loss of income. 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.20,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Loss of income	Rs.6,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Transportation	Rs.5,000/-
6.	Attender's charges	Rs.1,000/-
7.	Medical expenses	Rs.2,000/-
8.	Damage to clothes	Rs.500/-
Total		Rs.59,500/-

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.50,000/- to Rs.59,500/-.

(iii) The second respondent / New India Assurance 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 M.C.O.P.No.182 of 2006 on the file of the Motor Accident Claims Tribunal / II Additional Sub Court, Salem within a period of four weeks from the date of receipt of a copy of this order.

(iv) 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-IV)

//True Copy//

Sub Assistant Registrar

krk

To

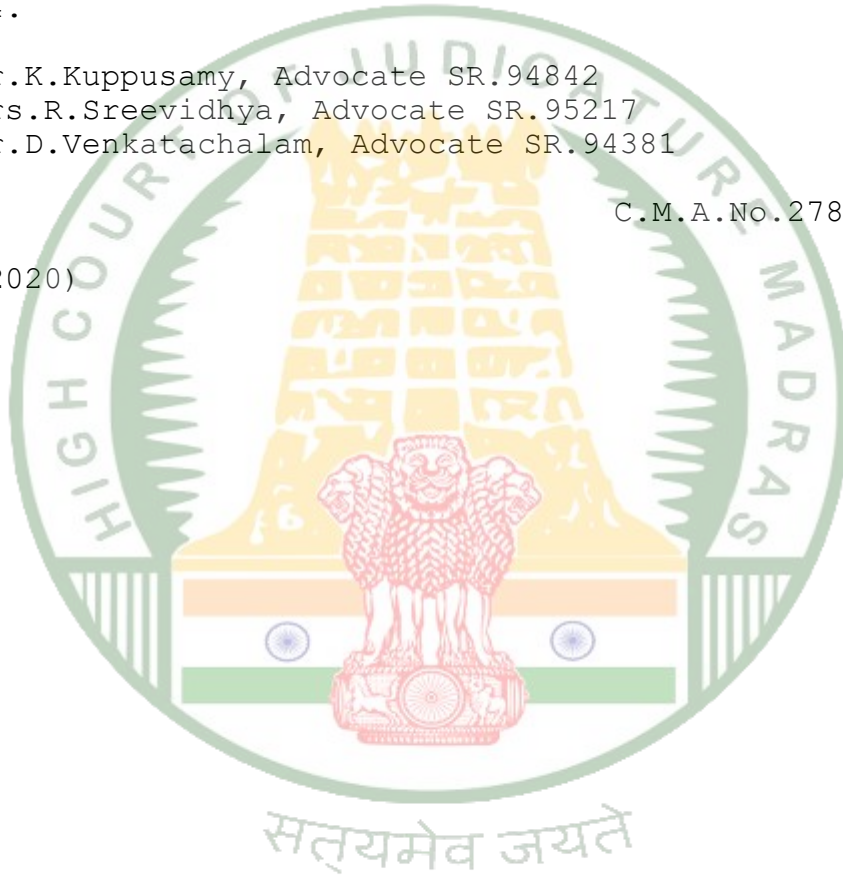
The Motor Accidents Claims Tribunal,
The II Additional Subordinate Judge,
Salem.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.K.Kuppusamy, Advocate SR.94842
+1cc to Mrs.R.Sreevidhya, Advocate SR.95217
+1cc to Mr.D.Venkatachalam, Advocate SR.94381

C.M.A.No.2780 of 2011

BS(CO)
CB(03/09/2020)



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