

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.270 of 2013

Thirumalai ...Appellant/Claimant
(sole appellant declared as major
and Parasuraman discharged from
the guardianship vide court order
dated 04.11.2019 made in
CMA.No.270 of 2013 and
as per memo dated 04.11.2019)

vs.

1.Vijay
2.The Divisional Manager,
The National Insurance Co. Ltd.,
No.19, Officers line,
Vellore. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988 against the decree and
Judgment dated 05.02.2008 passed in MCOP.No.593 of 2005 on
the file of the Motor Accident Claims Tribunal /
Additional Subordinate Court, Thiruvannamalai.

For Appellant : Mr.R.Rajarajan

For Respondents : Mr.M.Krishnamoorthy for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.593 of 2005
on the file of the Motor Accident Claims Tribunal /
Additional Subordinate Court, Thiruvannamalai. He filed
the claim petition under Section 166 of the Motor Vehicles
Act, 1988 seeking compensation of Rs.1,00,000/- for the
injuries sustained by him in a road accident on 02.02.2005.

2. The case of the claimant in nutshell is as follows:
On 02.02.2005, the claimant was standing on the side
of Thiruvannamalai - Thindivanan road, near Kilpennathur
Police Check Post and at about 04.30 pm, a speeding Maruthi

Car bearing Registration No. KA 17 MA 1994 belonging to the first respondent and insured with the second respondent hit him, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the car belonging to the first respondent was the cause of the accident and that since the said car was insured with National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the car remained absent before the Tribunal and therefore he was set exparte. The second respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.25,000/- 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. Heard Mr.R.Rajarajan, learned counsel appearing for the appellant / claimant and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

5. It is seen from the records that the claimant had sustained a fracture of right tibia and Dr.Raveendran (PW2) has assessed the partial permanent disability suffered by the claimant as 15%. It is pertinent to point out that the claimant was aged 8 years on the date of the accident and therefore, a sum of Rs.30,000/- is awarded towards partial permanent disability and a sum of Rs.50,000/- towards "pain and sufferings". 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.30,000/-
2.	Pain and sufferings	Rs.50,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
Total		Rs.97,500/-

6. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.97,500/-.

(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 / National Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.97,500/- (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.593 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Court, Thiruvannamalai 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-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Thiruvannamalai.

Copy to:

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

CMA.No.270 of 2013

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.91058

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.91191

SV(CO)

CB(21/07/2020)