

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.831 of 2013

Duraisamy

...Appellant

vs.

1.Kamal

2.The Divisional Manager,
National Insurance Co. Ltd.,
No.19, Officers Line,
Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.04.2011 passed in MCOP.No.644 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Mrs.M.Malar

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.644 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, 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 that took place on 30.03.2004.

2. The case of the claimant in nutshell is as follows:

On 30.03.2004, the claimant was travelling in a van bearing Registration No. TN 32 8645 belonging to the first respondent and insured with the second respondent on Thiruvannamalai - Villupuram main road and at about 10.30 pm, the driver of the van drove the vehicle rashly and negligently and hit a tamarind tree abutting the road, as a result of which, the claimant sustained injuries all over his body. According to the claimant, the rash and negligent driving of

the driver of the van bearing Registration No. TN 32 8645 was the cause of the accident and that since the said van was insured with the National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the van remained absent before the Tribunal and therefore he was set exparte. The second respondent / National Insurance Company contested the claim petition. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.47,500/- 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. Heard Mrs.M.Malar, learned counsel appearing for the appellant/ claimant and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent / Insurance Company. No appearance on behalf of the first respondent.

5. A perusal of the records shows that Dr.Ravindran (PW2) had assessed the partial permanent disability as 30% and the Tribunal reduced the same to 20% without assigning any valid reason. Considering the nature of injuries sustained by the claimant, the partial permanent disability is fixed as 30%, as assessed by Dr.Ravindran (PW2). Since there is no functional disability, applying multiplier method is not warranted as far as the present case is concerned. Since the accident took place in the year 2004, awarding a sum of Rs.2,000/- 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:

S.No	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.60,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.27,000/- (Rs.4,500 x 6 months)
Total		Rs.1,09,500/-

6. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.47,500/- to Rs.1,09,500/-.

(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.1,09,500/- (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.644 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, 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-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Thiruvannamalai.

+1cc to M/s.M.Malar, Advocate SR.89709

+1cc to Mr.M.Krishnamoorthy, Advocate SR.89436

KS(CO)
CB(10/06/2020)

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