

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3193 of 2013

Natesan

... Appellant/Petitioner

vs.

- 1.P.Kuppusamy (Set exparte before Tribunal)
- 2.The United India Insurance Co. Ltd.,
5-B-11, Salem Road, Rasipuram,
Namakkal District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 26.07.2010 in M.C.O.P.No.425 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Namakkal.

For Appellant : Mr.MA.P.Thangavel
For Respondents : Mr.K.Krishnamoorthy for R2
Exparte - R1

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.425 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Namakkal. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 17.10.2002.

2. On 17.10.2002, at about 08.30 pm, when the appellant / claimant was standing near Musripirivu, on Velagoundampatti - Periyamanali main road, a TVS Suzuki bearing Registration No.TN 49 D 6522, hit the appellant / claimant, as a result of which, he sustained grievous injuries. The contention of the appellant / claimant is that the accident took place due to the rash and negligent riding of the rider of the said TVS Suzuki. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 and PW2 were examined and Exs.P1 to P10 were

marked. On the side of the respondents, no documentary or oral evidence was marked.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.1,38,900/- together with interest at the rate of 7.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal.

5. The learned counsel appearing for the appellant / claimant submitted that the Tribunal ought to have fixed the notional income as Rs.5,000/- per month for arriving loss of income during the treatment period. He also submitted that the Tribunal ought to have adopted multiplier method for granting compensation under disability. He further submitted that the Tribunal ought not have reduced the disability from 40% to 25% since the appellant sustained grievous injuries. He prayed for enhancing the compensation under other heads and also to award some amounts under the heads loss of amenities and attender's charges.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and second respondent and perused the materials available on record.

8. From the claim petition, it is seen that the appellant / claimant was self-employed (driver), aged 27 years, earning a sum of Rs.5,000/- per month. From the materials available on record, it is seen that due to the accident, the appellant / claimant sustained fracture of tibia and fibula bones, interlocking nailing was done, plates and screws were also fixed. Dr.Kathiravan (PW2) has assessed the partial permanent disability as 40%. However, the Tribunal reduced the same to 25%. Considering the fracture sustained and treatment undergone by the appellant / claimant, this Court is of the view that disability can be fixed at 35% and since the accident is of the year 2002, a sum of Rs.1,000/- can be awarded per percentage of disability. Hence, Rs.35,000/- is awarded towards partial permanent disability. Considering the nature of treatment, Rs.3,000/- and Rs.7,000/- awarded towards transportation and extra nourishment are hereby enhanced to Rs.5,000/- and

Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attender's charges and damage to personal belongings and hence Rs.5,000/- and Rs.1,000/- are awarded towards the same. All the other heads awarded by the Tribunal are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of income	36,000	36,000
2	Transportation	3,000	5,000
3	Extra nourishment	7,000	10,000
4	Medical bills	37,903	37,903
5	Pain and sufferings	30,000	30,000
6	Attender's charges	Nil	5,000
7	Partial permanent disability	25,000	35,000
8	Damage to personal belongings	Nil	1,000
	Total	Rs.1,38,903/- rounded off to Rs.1,38,900/-	Rs.1,59,903/- rounded off to Rs.1,60,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,38,900/- is hereby enhanced to Rs.1,60,000/- together with interest at the rate of 7.5% per annum from 26.11.2009 till the date of deposit. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.425 of 2003 on the file of the Motor Accident Claims Tribunal / Fast Track court, Namakkal within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
Fast Track Court,
Namakkal.

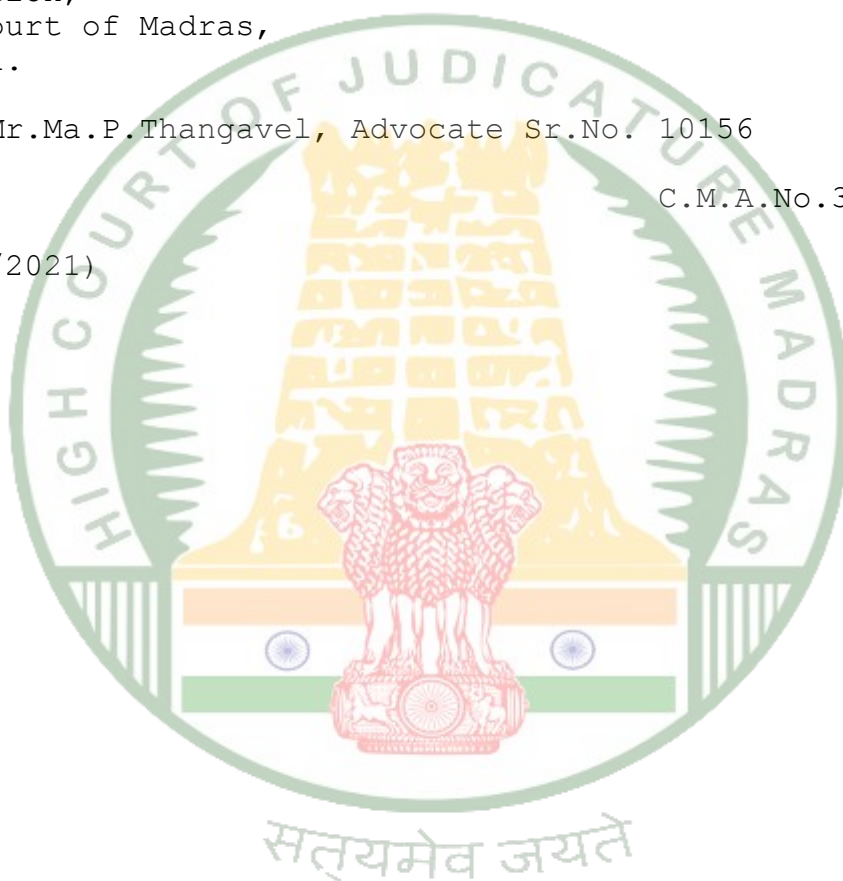
Copy to:

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

+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No. 10156

C.M.A.No.3193 of 2013

VGI (CO)
RMP (26/04/2021)



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