

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

C.M.A.No.3061 of 2009

K.Dharmalingam

... Appellant/Petitioner

Vs.

1. P.Balakumar
2. V.A.Pasupathi
3. IFFCO-TOKKIO General Insurance Co. Ltd.,
Branch Office,
Thulasi Chambers, IIIrd Floor,
T.V.Swamy Road (West)
R.S.Puram, Coimbatore - 641 002 ... Respondents/Respondent
(Respondent 1 given up)

Prayer:- Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 31.07.2009 in M.C.O.P.No.804 of 2007 passed by the Motor Accident Claims Tribunal (Additional District Judge & Fast Track Court No.1) Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents :

For R1 Given up

For R2 No appearance

For R3 Mr.N.Vijayaraghavan

JUDGEMENT

The petitioner in M.C.O.P.No.804 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge & Fast Track Court No.1), Erode has filed the above petition claiming compensation for the injury sustained by him in an accident that took place on 26.05.2007 at 10.30 a.m. The first respondent before the Tribunal is the driver of the offending vehicle; the second respondent before the Tribunal is the owner of the offending vehicle; and the third respondent is the insurer of the said vehicle.

2. According to the claimant the accident occurred only due to the rash and negligence driving of the driver of the offending vehicle. In support of his claim he examined himself as P.W.1. In connection with the accident, a criminal case has been registered. Ex.P.1 is the copy of First Information Report. Ex.P.2 is the Observation Mahazar prepared in the criminal case. Ex.P.3 is the Sketch.

3. It is the case of the claimant that at the time of the accident he was riding his T.V.S.50 Moped bearing registration No. TN28A4470 from East to West on the Kolanalli Main Road. The first respondent, who came from the opposite direction, according to the petitioner, in a rash and negligent manner and dashed against his motor cycle, as a result of which, he sustained greivous injury. The first and second respondents namely driver and owner of the offending vehicle remained exparte before the Tribunal. The third respondent-Insurance Company resisted the claim on the ground that there was negligence on the part of the claimant. The Tribunal has come to the conclusion that the first respondent was not responsible for the accident on the ground that there was a delay in lodging the complaint. It has also placed reliance on the Sketch and Observation Mahazar prepared by the Investigating Officer for the purpose of criminal case.

4. It is significant to note that the driver of the offending vehicle has not been examined. Therefore, adverse interference has to be drawn against him. The Police, after investigation, has registered a case against the first respondent and filed charge sheet against him. The first respondent pleaded guilty to the charge and paid the fine. The Tribunal should go by preponderance probabilities. There is no evidence on the side of the respondents to reject the evidence of the claimant. The evidence of injured, namely the claimant, coupled with the criminal proceedings taken against the driver of the offending vehicle would clearly establish that the accident occurred only due to the rash and negligent driving of the first respondent. Therefore, finding on the question of negligence of the Tribunal is liable to be set aside and is accordingly set aside.

5. The Tribunal disposed of the claim petition on the preliminary point of negligence. Tribunal did not fix the quantum of compensation. As there is sufficient evidence on record the parties requested this Court to determine the quantum of compensation.

6. The claimant has produced Ex.P.6-Wound Certificate and Ex.P.9-Medical Certificate issued by Senthil Multi Specialty Hospital, Erode. A perusal of the Wound Certificate shows that

the claimant sustained six greivous injuries and two simple injuries. He has produced medical bills to show that he has spent Rs.7,000/- towards medicines. Hence, a sum of Rs.7,000/- has to be awarded under the head of medical bills.

7. It is seen that immediately after the accident, the claimant was taken to Nandakumar Hospital, Naduppalayam, where he took first aid and he was shifted to Senthil Multi Specialty Hospital, Erode and he has undergone treatment as inpatient for a period of two weeks. Having regard to the period of hospitalisation and nature of injuries, I am of the view that a sum of Rs.10,000/- has to be awarded under the head of attendant charges.

8. The evidence of P.W.2-Doctor K.Periyasamy and the Certificate issued by him would show that the claimant suffered 24% of disability. The claimant would submit that he has undergone surgery and was taken treatment as out patient as he has been sustained fracture on the forehead and due to the injury he has not been able to lead to normal life and unable to ride two wheeler. Hence, the claimant has to be compensated at the rate of Rs.2000/- per percentage of disability a sum of Rs.48,000/- is under the head of permanent disability.

9. Having regard to the period of hospitalization and the nature of injuries sustained by the claimant, a sum of Rs.20,000/- has to be awarded under the head of pain and sufferings. The petitioner claims that he was doing coconut business and was earning Rs.10,000/- per month at the time of accident. However there is no concrete proof to show that he was earning Rs.10,000/- per month. Considering the loss of income during the period of treatment and the period of rest, I am inclined to award at the rate of Rs.6,000/- per month for 5 months. The claimant is entitled to get a sum of Rs.30,000/- (6,000 X 5) under the head of loss of income.

10. As already pointed out, the claimant was taken to Nandakumar Hospital, Naduppalayam for first aid and he was shifted to Senthil Multi Specialty Hospital, Erode for further treatment. I am inclined to award a sum of Rs.10,000/- under the head of transportation and a sum of Rs. 25,000/- under the head of amenities.

11. In view of the above discussion, the total compensation is computed as follows :-

Permanent disability (24%)	-	Rs.48,000/-
Pain and sufferings	-	Rs.20,000/-
Transportation	-	Rs.10,000/-
Attendant Charges	-	Rs.10,000/-
Medical Bills	-	Rs. 7,000/-

Loss of income during treatment	-	Rs.30,000/-
Amenities	-	Rs.25,000/-

		Rs.1,50,000/-

12. In the result, the Civil Miscellaneous Appeal is allowed and awarded compensation of Rs.1,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

13. The third respondent-Insurance Company is directed to deposit the compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of the receipt of copy of this Order. On such deposit being made, the appellant/claimant is entitled to withdraw the same. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rts

To

The Motor Accident Claims Tribunal
(Additional District Judge & Fast Track Court No.1) Erode

+1cc to M/S.R. Nalliappan, Advocate Sr. 11613

+1cc to M/S.N. Vijayaraghava, Advocate Sr. 12084

C.M.A.No.3061 of 2009

RSI (CO)
VR(16/5/2017)

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