

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 18.12.2017****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.M.A. (MD) No.1352 of 2016**

Sekar

... Appellant/Claimant

Vs.

1.Srinath

2.Reliance General Insurance

Company Ltd., through its
Branch Manager,
1st Floor, Sri Meenakshi Plaza,
Door No.55, 80 Feet Road,
Anna Nagar, Madurai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and judgment passed by the Additional District and Sessions Court/Fast Track Court No.III (Motor Accident Claims Tribunal), Madurai made in M.C.O.P.No.226 of 2009 dated 22.02.2012.

For Appellant : Mr.S.Ramesh Alias Ramiah

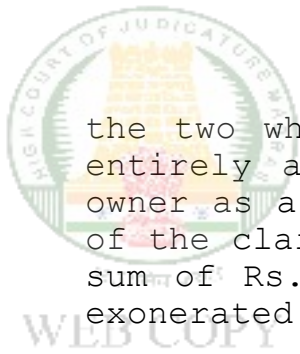
For Respondents : Mr.V.Sakthivel for R2
No Appearance for R1

JUDGMENT

The injured claimant has filed this appeal questioning the award on two grounds. He is aggrieved by the fact that the insurer has been completely exonerated. He also submits that the compensation awarded is not adequate.

2.When the matter was taken up for disposal, the learned counsel for the appellant conceded that he would not press the prayer for enhancement. He would be satisfied if the second respondent is directed to satisfy the award.

3.This is a case involving in collision of 2 two wheelers. The appellant was only a pillion rider. The accident had occurred on 13.09.2008 at about 8.30 p.m. The claimant was the one who lodged the FIR, Ex.P1. The claimant chose to put the entire blame on the rider of the another vehicle and not the rider of the vehicle in which he was riding as the pillion rider. But, when he came to filing of the claim petition, he chose to sing a different song. In the claim petition, the appellant herein contended that it was the driver of



the two wheeler, in which he was riding as pillion rider, who was entirely at fault. He did not choose to make the other vehicle owner as a party. The Tribunal took an adverse view on the conduct of the claimant. However, the Tribunal chose to pass an award for a sum of Rs.48,800/- on the first respondent alone. It completely exonerated the second respondent herein.

4.The Hon'ble Supreme Court in the decision reported in 2015 (1) TNMAC 801 - Khenyei Vs. New India Assurance Company Limited and Others, held that where there are joint tort-feasors involved, it is open to the claimant to file claim against both or one of the joint tort-feasors. In this case, there is a collision involving two vehicles. Therefore, in the very nature of things, liability can be fixed on the first respondent also. The apportionment of negligence can of course be more on one rider and less on the other.

5.In these facts and circumstances of the case, I am of the view that the first respondent herein was at fault. The first respondent driver was examined as a witness and he deposed that due to his family circumstances, he was under stress and that therefore, it would on account of his negligence that the accident occurred.

6.The learned counsel appearing for the appellant pointed out that the FIR lodged by the claimant was closed as Mistake of Fact. In these circumstances, I am of the view that the Tribunal ought to have fixed the liability on the second respondent herein. The award dated 22.02.2012 made in M.C.O.P.No.226 of 2009 on the file of the Additional District and Sessions Court/Fast Track Court No.III (Motor Accident Claims Tribunal), Madurai is accordingly modified.

4.The second respondent insurance company is directed to deposit the entire compensation as awarded by the Tribunal with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal.

5.This civil miscellaneous appeal stands allowed to the above extent. No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Additional District and Sessions Court/
<https://hcservices.ecourts.gov.in/hcservices/>
Fast Track Court No.III
(Motor Accident Claims Tribunal), Madurai



2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

3.Srinath,
S/o.Danusuramu,
D.No.25/16, Puthu Thoppu,
Sekkadi Madurai Town, Madurai.

+1cc to Mr.V.Sakthivel, Advocate, SR.No.93514.
+1cc to M/s.A.Liaketali, Advocate, SR.No.93593.

C.M.A. (MD) No.1352 of 2016
18.12.2017

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