



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.897 of 2016

V.Veeraiah

.. Appellant /
Claimant

Vs.

1.V.Raman

2.The Branch Manager,
Cholamandalam MS General
Insurance Company Limited,
Near Thangam Motors,
Kalavasal,
Madurai.

... Respondents/
Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 14.10.2015, made in M.C.O.P.No.35 of 2013 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Madurai.

For appellant : Mr.C.Vakeeswaran

For 1st respondent : Mr.R.Babu Jaganath

For 2nd respondent : Mrs.Sivasankari

JUDGMENT

It is a case of injury. As against the dismissal of the claim petition, the claimant has filed this appeal. When the matter came up for hearing on 03.11.2017, there was no representation for the second respondent / Insurance Company and a learned Single Judge of this Court, after hearing the learned counsel appearing for the claimant and the first respondent, has allowed this appeal. On coming to know about the disposal of the appeal, the Insurance Company has filed rehearing petition stating that the judgment of this Court is an ex parte order and the non representation on his behalf was neither wilful nor wanton. In order to give one more opportunity, this Court has allowed the said rehearing petition and thereby, recalled the judgment, dated 03.11.2017, passed in the appeal.



2. Heard the learned counsel appearing on either side and perused the records carefully.

3. According to the claimant, when he was sitting on his Hero Honda Motorcycle bearing Registration No.TN-59-AU-1078 on the extreme left side of the road on 27.05.2012 at 4.30 p.m., the first respondent's vehicle bearing Registration No.TN-09-BD-4149 came in a great speed and dashed against him, due to which, he sustained multiple injuries and suffered amputation on his left leg. The said vehicle was insured with the second respondent herein. The Tribunal has dismissed the claim petition on the ground that the claimant did not establish the involvement of the first respondent's vehicle.

4. The learned counsel appearing for the claimant would submit that it is a hit and run case and after thorough investigation, the Police has found that the first respondent's white Innova Car bearing Registration No.TN-09-BD-4149 had caused the accident and filed a final report against the driver of the first respondent. When the final report filed by the Police has clearly stated about the involvement of the vehicle, the Tribunal ought not to have gone into the question of involvement of the vehicle. He would further submit that before the accident, the claimant was working as mason and due to accident, he lost his left leg and he could not continue his avocation. He would further submit that the claimant had spent about Rs.1,12,168/- towards medical expenses and the doctor has assessed the disability of the claimant as 37%. By relying upon the decision of the Hon'ble Supreme Court in **Vimal Kanwar Vs. Kishore Dan**, reported in **2013 (1) TN MAC 641 (SC)**, he requested this Court to award Rs.3,000/- per percentage of disability. He further requested this Court to award reasonable compensation on the heads of pain and sufferings, loss of income during treatment period, loss of amenities, nourishment, etc.

5. The learned counsel appearing for the respondents in unison submitted that the first respondent's vehicle had not involved in the accident and that in the complaint, it has been stated that the vehicle involved in the accident is a white colour Qualis Car, but the first respondent's vehicle is a white colour Innova car and further, in the arrest card, the vehicle number has been wrongly mentioned. More over, the Motor Vehicle Inspector, who inspected the vehicle in question, has not noticed any damage. Based on the said discrepancies, the Tribunal has rightly rejected the claim petition filed by the appellant / claimant and the same need not be interfered with. Thus, they prayed to dismiss the appeal.

6. It is a hit and run case. Due to the accident, the claimant has lost his left leg below knee. Initially, a complaint



has been registered stating that the vehicle involved in the accident is a white colour Qualis car without mentioning the vehicle number. After thorough investigation, the Police found that the first respondent's white colour Innova car had caused the accident and thereby, filed a final report against the driver of the vehicle before the jurisdictional Court. As the accident had occurred in a fraction of moment and the vehicle, which caused the accident, had rushed away from the spot, the claimant could not have noted the vehicle number and exact model of the car. Merely because there is a change in the model name, it cannot be held that the first respondent's vehicle had not involved in the accident.

7. It is stated by the respondents that in the arrest card, the vehicle number has been mentioned as TN-02-4149, whereas the first respondent's vehicle number is TN-09-BD-4149 and therefore, the first respondent's vehicle had not involved in the accident. As stated by the respondents, in the arrest card the vehicle number has been wrongly mentioned as TN-02, however, the main vehicle number "4149" was correctly mentioned. This Court is of the view that it is only a careless mistake committed by the Police. However, the Police, after detailed investigation, has filed the final report against the driver of the vehicle by name Suresh, mentioning the first respondent's vehicle bearing Registration No.TN-09-BD-4149. Hence, the said error cannot be taken serious note of.

8. According to the respondents, the Motor Vehicle Inspector has not found any damage to the first respondent's vehicle and therefore, the first respondent's vehicle has not involved in the accident. Admittedly, after three months only, the Motor Vehicle Inspector has conducted inspection in the vehicle. The change of spare parts immediately after the accident cannot be ruled out. Therefore, the said contention is rejected.

9. Admittedly, in this case, the respondents have not adduced any rebuttal evidence. The first respondent remained *ex parte* before the Tribunal. The driver of the vehicle, who is the best witness to speak about the occurrence, has not been examined on the side of the respondents. On the side of the claimant, PW2 was examined as an eyewitness to the occurrence and he has clearly deposed about the manner of the accident. This Court is of the view that by applying the principles of preponderance of probabilities, the claimant has established that the accident had occurred due to rash and negligent driving of the first respondent's vehicle by its driver. As there is no dispute that the policy was in force at the time of the accident, the second respondent is liable to pay the entire compensation amount on behalf of the first respondent.



10. Now, let us analyse the quantum of compensation. At the time of the accident, the claimant was aged about 30 years. Due to accident, he has lost his left leg. As per Ex.P13, the claimant has sustained 37% disability. As per Vimal Kanwar case, cited supra, the claimant is entitled to get Rs.3,000/- per percentage of disability. Hence, Rs.1,11,000/- (3000 x 37 = 1,11,000) is awarded towards disability. Considering the nature of the injuries and the sufferings undergone by the claimant, this Court is inclined to award a sum of Rs.1,00,000/- towards pain and sufferings. As per the medical bills produced by the claimant, he is entitled to get Rs.1,12,168/- towards medical expenses. It is seen that the claimant had taken treatment as inpatient for about one month and as outpatient for about three months. Though the claimant was stated to be earning a sum of Rs.15,000/- p.m. by doing mason work, considering the avocation and age of the claimant and also year of the accident, this Court is of the view that Rs.10,000/- can be reasonably fixed as the notional monthly income of the deceased. Thus, the loss of income during treatment period comes to Rs.40,000/- (10,000 x 4 = 40,000). In addition to the above, this Court is inclined to award a sum of Rs.10,000/- towards transportation, Rs.10,000/- towards nourishment and Rs.50,000/- towards loss of amenities. Thus, the following awards are made under the following heads:

Disability	:	Rs.1,11,000/-
Pain and sufferings	:	Rs.1,00,000/-
Medical expenses	:	Rs.1,12,168/-
Loss of income during treatment period	:	Rs. 40,000/-
Transportation	:	Rs. 10,000/-
Nourishment	:	Rs. 10,000/-
Loss of amenities	:	Rs. 50,000/-

Total	:	Rs. 4,33,168/-
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11. Thus, the claimant is entitled to get Rs.4,33,168/- with 7.5% interest from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount with accrued interest from the date of petition till the date of deposit and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interest and costs by filing a petition before the Tribunal. The claimant shall pay the Court fee, if any to be paid, for the award amount within a period of four weeks from the date of receipt of a copy of this judgment.



12. This Civil Miscellaneous Appeal is accordingly partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Madurai.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.S.SRINIVASA RAGHAVAN, Advocate SR. NO.77405

+1 CC To MR.C.VAKEESWARAN, Advocate SR. NO.76949

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