

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.01.2019
DELIVERED ON: 01.02.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA No.987 of 2007

Dinakaran ... Appellant/claimant

Vs.

1. Kumar
2. The National Insurance Company Limited,
Represented by its Divisional Manager,
No.19, Officer's line,
Opposite to Lakshmi Theatre,
Vellore. ...Respondent

R1 Exparte before Tribunal

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 29.03.2006 passed by the Principal District Judge, Motor Accidents Claims Tribunal, Vellore in MCOP No.1 of 2004.

For Appellant : Mr.C.Prabhakaran
For 2nd Respondents : Mr.J.Chandran

JUDGMENT

The appellant is the claimant in MkCOP No.1 of 2004 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Vellore and he filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 15.08.2003.

2. The brief case of the claimant is as follows. On 15.08.2003 the claimant was travelling as a pillion rider in a motorcycle bearing registration TN-23-X-3272 ridden by one Sridar on Sathuvachari-Arcot road. At about 11.30 a.m. when he was nearing the office of District Employment Exchange, a speeding auto bearing registration No.23-B-8131 belonging to the first respondent and insured with the 2nd respondent hit the two wheeler, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent

driving of the driver of the auto was the cause of the accident and that since the vehicle was insured with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The first respondent, remained absent before the tribunal and therefore, he was set exparte. The 2nd respondent, insurance company contested the claim petition.

4. The Principal District Judge, Motor Vehicle Accidents Claims Tribunal, Vellore, after analysing the evidence on record, dismissed the entire claim petition by observing that

- i) In the first information Report (Ex.P1), the place of occurrence is mentioned as opposite to the office of the District Employment Exchange, while in the wound certificate (Ex.P2), the place of occurrence is indicated as Sathuvachari.
- ii) There is a delay of 9 days in registering the first information report.
- iii) The evidence of claimant (PW1) is not also trustworthy.

Aggrieved over the orders passed by the tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. Mr.C.Prabhakaran, learned counsel appearing for the appellant/claimant would contend that the wound certificate (Ex.P2) was prepared by a doctor and he has indicated the place of occurrence as Sathuvachari, and that however in the first information report, the place of occurrence is indicated as "District Employment exchange". He would further contend that though on the basis of an intimation given by the hospital authorities a police officer had gone over to the hospital, where the claimant was taking treatment and also recorded his statement, failed to register the first information report immediately and that in any event the Sub Inspector of Police, Vellore North Police Station, after completing investigation, laid a charge sheet before the Judicial Magistrate, Vellore, against the driver of the auto.

6. Per contra, Mr.J.Chandran, learned counsel appearing for the National Insurance Company, the 2nd respondent would contend that the District Employment Exchange office is situated in some other place and Sathuvachari is far off from the said office. He would further contend that the tribunal was right in dismissing the entire claim petition, since there is a discrepancy with regard to the place of occurrence.

7. At the out set, it may be observed that the Motor Vehicle Accident Claims petition should not be treated like a criminal case. The owner of the auto bearing registration No.23-B-8131 did not contest the claim petition and the Sub Inspector of Police, North Police Station, Vellore filed a final report against the driver of the auto, as evidenced by a copy of the final report Ex.A4. In the final report, the place of occurrence is indicated as District Employment Office on Arcot Road. A perusal of the medical records shows that the claimant was admitted in the CMC Hospital, Vellore, immediately after the accident and the Hospital Authorities would have definitely, given intimation to the concerned police station with regard to the road accident and the police officials alone should be blamed for not registering the first information report, immediately after receiving intimation from the Hospital Authorities. Even otherwise, in the instant case, the first information report was registered ofcourse with a delay of 9 days and the Sub Inspector of Police, North Police Station, Vellore, after thorough investigation, laid a final report against the driver of the auto bearing registration No.23-B-8131, before the Judicial Magistrate, Vellore. The owner of the auto did not also deny the factum of the accident.

8. Moreover, the investigator appointed by the 2nd respondent/Insurance Company had also in his report (Ex.R1) stated that the accident took place on 15.08.2003 at about 11.30 a.m., near Employment Exchange office, Arcot Road, Vellore. In the facts and circumstances of the present case, I hold that the accident took place in the manner alleged by the claimant.

9. Quantum of compensation

(i) Medical bills.

The claimant/appellant has produced medical bills to the tune of Rs.16,173/- (rounded off Rs.16,200) and therefore, a sum of Rs.16,200/- is awarded towards medical bills.

(ii) Loss of earning capacity

A perusal of the wound certificate (Ex.P2) shows that the claimant sustained the following injuries.

1. Type III B compound communitied fracture right patella

2. Type III compound fracture lateral condyle of right femur

In the opinion of the doctor attached to the CMC Hospital, Vellore, the injuries sustained by the claimant are grievous in nature. Since the claimant sustained fracture as stated above, the partial permanent disability suffered by the claimant is assessed as 10% and Rs.1,000/- is awarded per percentage. Thus, a sum of Rs.10,000/- is awarded under the head "loss of earning capacity".

10. Apart from the above amount, a sum of Rs.5,000 is awarded towards "pain and sufferings" and a sum of Rs.5,000,

Rs.2,000, and 1,000 are awarded under the heads "Extra nourishment", "attender's charges" and "Damages to cloth" respectively. Therefore, no notional income is fixed. Thus, the compensation awarded to the claimant under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Medical bills	16,200
2	Loss of earning capacity	10,000
3	Pain and sufferings	5,000
4	Extra Nourishment	5,000
5	Attender's charges	2,000
6	Damage to cloths	1,000
	Total	39,200

This amount shall carry interest at the rate of 7.5% per annum from the date of the claim petition.

11. In the result,

i) The appeal is allowed in part. No costs.

ii) The Orders passed by the tribunal is set aside.

iii) The insurance company is directed to deposit the compensation of Rs.39,200/- along with interest at the rate of 7.5% per annum, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

mst

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Vellore.

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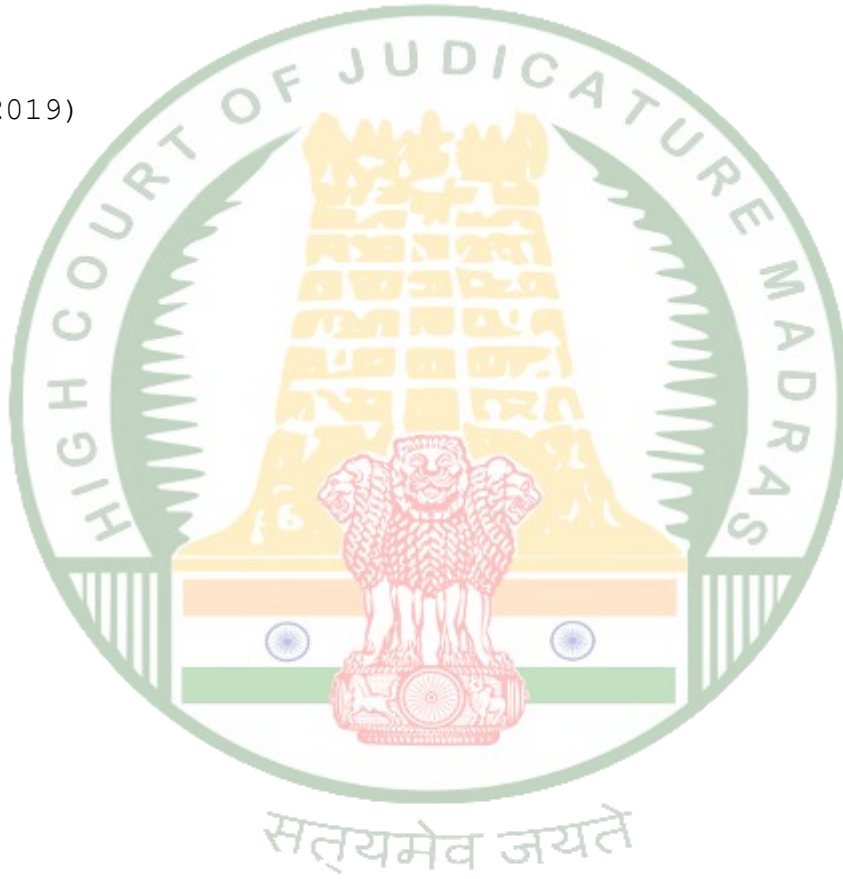
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.J.Chandran, Advocate sr 9374.

+1 CC to Mr.C.Prabhakaran, Advocate sr 9270.

CMA.No.987 of 2007

KAN (CO)
SP (15/05/2019)



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