

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.208 OF 2011

R.Raja @ Natarajan

.. Appellant/Petitioner

Vs.

1. T.Dilli

2. The Oriental Insurance Co.Ltd.,
No.115/216, Prakasam Road,
Broadway, II- Floor,
HUB, Chennai - 1.
(1st respondent was set-exparte
before the Tribunal)

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.08.2006 made in M.C.O.P.No.601 of 2000 on the file of the Motor Accidents Claims Tribunal, III - Small Causes Court, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand & Suryas

For R2 : Mr.P.Kandaswamy

For R1 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 07.08.2006 made in M.C.O.P.No.601 of 2000 on the file of the Motor Accidents Claims Tribunal, III - Small Causes Court, Chennai, by which the learned Claims Tribunal dismissed the petition filed by the claimant, on the ground that there is 75 days delay in filing the First Information Report.

2. Heard both sides. Perused the materials on record.

3. It is seen from the records that though the Tribunal has framed necessary points for determination, it has not arrived at any compensation in respect of point Nos.2 and 3, which is extracted hereunder:

"Point No.2: Whether the Motor cycle bearing Reg.No.TN - 07-was insured with the second respondent?

Point No.3: Whether the petitioner is entitled for compensation? If so, What is the quantum?"

4. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

(i) The appellant / claimant has preferred the M.C.O.P.No.601 of 2000 alleging that on 04.10.1999 at about 23.15 hours, when the petitioner was travelling as a pillion rider in a two-wheeler bearing Regn.No.TN-07 F-7889 at Sir Theyagaraya Road from East to West direction, at that time, the rider of the vehicle ridden the vehicle in a rash and negligent manner, endangering public safety and while trying to avoid a collusion with a cyclist, who was also proceeding in the same road, applied sudden brake, due to which he lost his control over the vehicle and hit against the road side platform and as a result of which, the petitioner was thrown out of the vehicle and sustained comminuted fracture shaft of right femur contusion injury in the left leg, Head injuries, contusion scalp, bleeding injury in the nose and ear and also sustained multiple injuries all over the body due to the fault of the rider of the first respondent vehicle.

(ii) The Insurance Company filed a counter statement alleging that the accident has not taken place due to rash and negligent driving of the rider of the bike but only due to carelessness and negligence of the injured claimant, who is a pillion rider. Further, in the counter statement it has been stated that neither the 1st respondent nor the 2nd respondent are liable to pay the compensation. The petitioner himself had fallen and therefore, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimant, the claimant was examined as P.W.1 and one Doctor was examined as P.W.2 and Exhibits P1 to P7 were marked. On behalf of the insurance company the Investigator was examined as RW1 and Exhibits R1 and R2 were marked.

6. Based upon the averment made in the Accident Register which is marked as Ex.R1, the Tribunal held that there was a delay in filing the First Information Report and also held that the injured claimant himself drove the vehicle and due sudden brake he fall down from the vehicle and hence, the Insurance Company is not liable to pay any compensation for the injuries suffered by him.

7. After hearing the learned counsel for the appellant/claim petitioner and after perusing Ex.P4-FIR copy, wherein it has been stated that he has sustained injury by falling down from the bike. As per Ex.P4- FIR the version of the PW1 was duly corroborated and the claimant also sustained injury as per discharge summary-Ex.P1.

8. The only contention raised by the insurance company is that since there was a delay in filing the FIR, the Claims Tribunal has rightly rejected the Claim Petition filed by the injured Claimant.

9. On a perusal of the counter statement it could be seen that the Insurance Company has taken a stand that the accident had occurred only due to carelessness and negligence of the injured claimant and the respondents 1 and 2 are not liable to pay any compensation, therefore, the clam petition filed by the claimant is liable to be dismissed.

10. In the absence of any contra evidence with regard to the policy coverage being not disputed by the insurance company either in the counter statement or by the First respondent, it is held that the insurance company and first respondent are jointly and severally liable to the compensation.

11. In the decision of the Honourable Supreme Court in [Ravi Vs. Badrinarayan and others] reported in (2011) 4 SCC 693, the Supreme Court cases categorically held that:-

" Held:

(a) it is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station.

Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

(b) There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless Kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

(c) Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it.

In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences."

12. It is not in dispute that the injured was immediately admitted in the hospital and taken treatment as seen from Ex.P1-Discharge summary. Hence, there is a delay of 75 days in filing the First Information Report. In view of the decision reported in (2011) 4 SCC 693 (cited supra) and in the absence of any contra evidence, the finding of the Tribunal is hereby stands vacated. Further, on a perusal of Ex.P4-FIR, Ex.P1 discharge summary and the deposition of Ex.PW1, this Court feels that the claim petitioner fell down and sustained grievous injuries, namely, fracture of right femur, left leg and hence, the

accident has taken place due to rash and negligence of driver of offending vehicle first respondent, and hence both the first and second respondents are liable to pay the compensation to the injured claimant.

13. On the quantum of compensation, both the parties are heard.

14 From the evidence of the PW2 doctor N.Saichandran, it could be seen that the petitioner suffered "communitied fracture shaft of right femur, left leg contusion, head injuries, contusion scalp, bleeding on nose and ear and other multiple injuries all over the body" Taking into consideration the injury suffered by PW1, disability is fixed at 25%. Considering the nature of the injury and also the date of the accident i.e., on 04.10.1999, a sum of Rs.1000/- is fixed per percentage of disability. Since this Court fixed the percentage of disability at 25%, a sum of Rs.25,000/- (Rs.1000 x 25) is awarded for disability and Rs.10,000/- is awarded towards Medical Expenses, a sum of Rs.7,000/- is awarded under the head 'pain and suffering', a sum of Rs.5,000/- is awarded towards transportation, a sum of Rs.4,000/- is awarded for loss of amenities and a sum of Rs.3,000/- is awarded towards Attendant charges. Thus, the compensation awarded by this Court is as follows:-

Heads under which the amount is awarded	Amount awarded by this Court
Disability	Rs. 25,000/-
Medical expenses	Rs. 10,000/-
Pain and Suffering	Rs. 7,000/-
Transportation	Rs. 5,000/-
Loss of amenities	Rs. 4,000/-
Attendant charges	Rs. 3,000/-
Total	Rs. 54,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by this Court is Rs.54,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/ Insurance Company is directed to deposit the award amount along with interest 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 appellant/claimant is permitted to withdraw the amount along with interest and costs No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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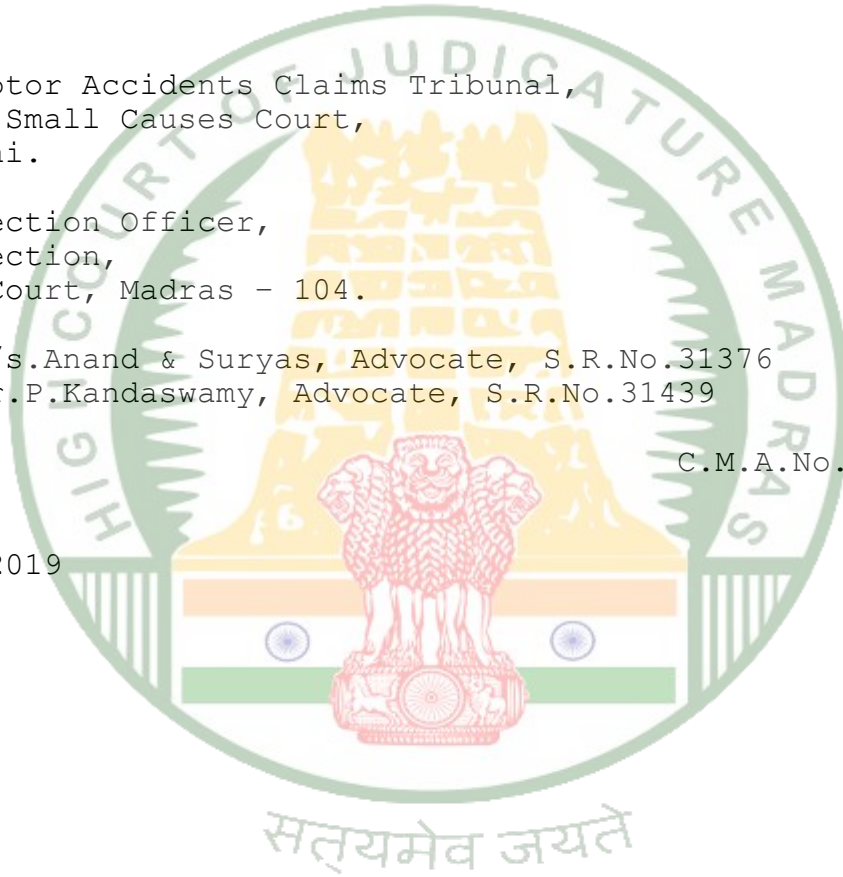
1. The Motor Accidents Claims Tribunal,
III - Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.Anand & Suryas, Advocate, S.R.No.31376

+1cc to Mr.P.Kandaswamy, Advocate, S.R.No.31439

C.M.A.No.208 of 2011

SSV(CO)
CS/26/07/2019



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