

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED 19.11.2020****CORAM****WEB COPY****THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM****C.M.A(MD) No.554 of 2008**

C.Sathyanarayanan

.. Appellant/Claimant

vs.

1.Ganesan

2.The Oriental Insurance Company Limited,
represented by its Branch Manager,
Door No.119,Sekkalai Road,
Karaikudi,
Sivagangai District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and Decree made in M.C.O.P.No.94 of 2006 dated 27.09.2007, on the file of the Motor Accident Claims Tribunal, (Sub-Court), Devakkottai.

For Appellant	:M/s.Porkodi Karnan
For Respondent-1	:No appearance
For Respondent-2	:Mr.K.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and Decree made in M.C.O.P.No.94 of 2006 dated 27.09.2007, on the file of the Motor Accident Claims Tribunal, (Sub-Court), Devakkottai.

2.The appellant is the claimant. He filed a claim petition seeking compensation of Rs.3 lakhs. It is the case of the claimant that on 11.6.2005, at 4.00 p.m. when he was riding his motor cycle bearing Registration No.TN 63 X 0532 in Devakkottai-Thiruppathur main road from east to west direction and at that point of time, a motor cycle bearing Registration No.TN 63 V 1746, coming in the opposite direction, driven by its driver in a rash and negligent manner hit against the motor cycle driven by the appellant. Due to which, he fell down and sustained fractures and injuries. Immediately, he was taken to Boominathan Hospital and then has taken treatment with Dr.Muthiah and thereafter, he was admitted in Government Hospital at Karaikudi and Devakkottai. It is the case of the claimant that due to the injuries sustained by him, he was unable to stand for a long time and sit on the floor, as before.



3. Both the respondents, in their counter affidavit, have denied the allegations and averments contained in the claim petition. The second respondent/Insurance Company has specifically denied the involvement of the vehicle in the accident.

4. During trial, on behalf of the appellant/claimant, two witnesses were examined and Ex.P1 to Ex.P22 were marked and on the side of the Insurance Company, one Ganesan was examined as R.W.1 and no document was marked.

5. The Tribunal, on appreciation of evidence, having found that the vehicle of the first respondent was not involved in the accident, had dismissed the claim petition. Aggrieved over the said decision, the present appeal has been filed by the claimant.

6. M/s. Porkodi Karnan, learned counsel for the appellant would argue that the Tribunal, mainly rejected the claim petition on the ground that there was a delay of 16 days in lodging the First Information Report. It is further submitted that Ex.P22 would show that the rider of the motor cycle TN 63 V 1746 was prosecuted before the Criminal Court and he also paid the fine amount and therefore, the delay cannot be taken into account to reject the case of the claimant.

7. Per contra, Mr. K. Bhaskaran, learned counsel appearing for the second respondent/Insurance Company made submissions in support of the decision of the Tribunal.

8. In the instant case, it is the case of the appellant/claimant that on 11.6.2005, when he was proceeding in his motor cycle, the opposite vehicle hit against his vehicle and thereby he sustained injury. Though the accident had taken place on 11.6.2005, the complaint was given to the Police only on 26.6.2005, which shows that there was a delay of 16 days in lodging the complaint. Admittedly, the claimant was working as a Village Administrative Officer and it is expected from him to give the complaint at the earliest point of time. Even though he sustained injuries in the accident, nothing prevented him from lodging the complaint while he was taking treatment in the hospital. Furthermore, he chose to admit himself in Government Hospital at Karaikudi after a lapse of two weeks. Ex.P4-Motor Vehicle Inspector's Report shows that there was no damage to the offending vehicle.

9. It is pertinent to note that if the offending vehicle is involved in the accident as spoken by P.W.1, certainly damage would have been caused to the vehicle. A perusal of the impugned judgment reveals that rejection of the claim petition is not on the sole ground of delay in lodging complaint, but taking into consideration on the other aspects also. So, this Court does not find force in the contention of the learned counsel for the appellant. Therefore, in my considered opinion, no ground is made out warranting interference of this Court.



10. For the foregoing reasons, the Civil Miscellaneous Appeal stands dismissed. No costs.

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Sd/-

Assistant Registrar (CS-II)

/ /2020

Sub Assistant Registrar (CS)

Vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Judge,
Motor Accident Claims Tribunal,
(Sub-Court),
Devakkottai.

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

+1 CC to Mr.K.BHASKARAN, Advocate (SR-22233[F] dated 20/11/2020)

+1 CC to M/s.POLEX LEGAL SOLUTION, Advocate (SR-22262[F] dated 20/11/2020)

JUDGMENT MADE IN
C.M.A(MD) No.554 of 2008
19.11.2020

VB (04.12.2020) 3P 6C