



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 11.01.2021

CORAM

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD)Nos.1236 of 2010**

**and**

**M.P(MD)Nos.1 and 2 of 2010**

M/s National Insurance Company Ltd.,  
Branch Office, 63,Rasi Plaza,  
S.N.M.R. Building,  
West Prathatchinam Road, Karur,  
rep. by its Branch Manager.

.. Appellant/2<sup>nd</sup> Respondent

vs.

1.Chelliah  
2.S.Selvam

... 1<sup>st</sup> Respondent/Petitioner  
... 2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the fair and decretal order made in MCOP No.9 of 2007 on the file of the Motor Accident Claims Tribunal (Sub Court), Karur, dated 07.08.2007.

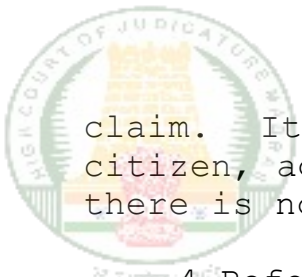
For Appellant : Ms.P.Malini  
For Respondents : Mr.V.Balaji (for R1)  
R2- Exparte

### **J U D G M E N T**

This appeal has been preferred by the Insurance Company questioning the award passed by the Motor Accident Claims Tribunal (Sub Court), Karur in MCOP No.9 of 2007 dated 07.08.2007.

2.The claim petition was filed by the first respondent herein seeking compensation of Rs.3,00,000/- on the ground that on 31.05.2006 at 11.00 p.m, he travelled in a motorcycle bearing registration No.TN -47-M-4457 as pillion rider. It is alleged that the driver applied sudden brake. In that process, he fell down and sustained fracture and also injuries. Immediately, he was carried to Karur G.C Hospital, where he took treatment for 10 days. He also stated that he was aged about 70 years and he was owning 5 Acres land.

3.The claim petition was opposed by the appellant contending that though the incident had taken place on 31.05.2006, the complaint was preferred only on 05.06.2006 and it was a false



claim. It is also contended that since the claimant was a senior citizen, aged about 80 years, he fell down and sustained injuries, there is no liability to be fixed on the insurance company.

4. Before the Tribunal, the claimant himself has examined as P.W.1 and examined Dr. Duraisamy as P.W.2 and marked Exs. P.1 to P.12. No witness was examined and no documents were produced by the appellant/Insurance Company.

5. The Tribunal, on appreciation of evidence adduced by the claimant, found that the rider of the two wheeler caused the incident and awarded compensation of Rs.83,000/- with interest at the rate of 7.5% per annum. Aggrieved over the same, the present appeal has been filed.

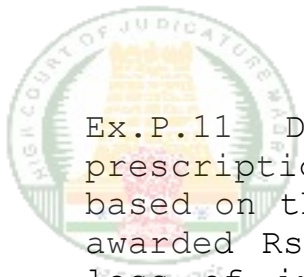
6. Mr. P. Malini, learned counsel for the appellant/Insurance Company would contend that there was no explanation offered by the claimant for the delay in lodging the First Information Report. She would further contend that the pillion rider had no coverage and at the time of accident, no extra premium was paid by the insured and hence, the Tribunal ought to have exonerated the Insurance Company from the liability.

7. Per contra, Mr. V. Balaji, learned counsel for the claimant justified the findings of the Tribunal and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant/insurance company and the learned counsel for the claimant.

9. In the matter on hand, the first respondent has approached the Tribunal contending that on 31.05.2006, when he travelled as pillion rider in a two wheeler, since sudden brake applied, he fell down and sustained injuries and fracture. In support of his case, he gave evidence as P.W.1 and also produced Ex. P.1 First Information Report, Ex. P.3 Motor Vehicles Inspector's Report, Ex. P.4 Rough Sketch, Ex. P.5, Charge Sheet and Ex. P.6 Judgment of the criminal Court. From the oral evidence of P.W.1 and the documents marked, it is seen that the criminal case has been registered against the rider of the two wheeler and he has also paid fine before the criminal court. So, the finding of the Tribunal that the rider of the two wheeler was responsible for the accident does not warrant any interference by this Court and hence, it is confirmed.

10. It is seen that Ex. P.2 is the wound certificate which shows that in the accident, the claimant sustained injuries and fractures and P.W.2, Dr. Duraisamy, who examined the claimant, ~~has assessed the claimant suffered 17½% disability and issued~~



Ex.P.11 Disability Certificate. Exs.P.7 and P.8 are the prescription and Exs.P.9 and P.10 are the medical bills. So, based on the evidence of P.W.2 and Exs.P.7 to 12, the Tribunal has awarded Rs.45,000/- towards medical expenses; Rs.12,000/- towards loss of income; Rs.15,000/- towards loss of estate; Rs.10,000/- for pain and suffering and Rs.1000/- for extra nourishment. In total, the Tribunal awarded Rs.83,000/- along with interest at the rate of 7.5% per annum. In my opinion the amount is reasonable.

11.Though the learned counsel for the appellant would contend that the Insurance Company is not liable to pay compensation since no extra premium was paid by the insured, admittedly, no document was produced before the Tribunal. Hence, I find no substance in the contention of the learned counsel for the appellant. Hence, the appeal is liable to be dismissed.

12.In that view, the Civil Miscellaneous Appeal is dismissed. Since the appeal is dismissed, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, 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 award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

To

The Motor Accident Claims Tribunal, Sub-Court, Karur.

COPY TO

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

+1 CC to M/s.P.MALINI, Advocate ( SR-1072[F] dated 19/01/2021 )

**JUDGMENT MADE IN**  
**C.M.A(MD)No.1236 of 2010**  
**11.01.2021**

pk(CO)

TR(01.03.2021) 3P 5C

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