

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	22.01.2021
Date of Judgment	21.04.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1066 of 2017

WEB COPY

Jeya Balaji : Appellant/Petitioner

Vs.

1.K.Ponraman
2.M/s.United India Insurance Company Limited,
Rep. By its Branch Manager,
No.70, NSC Bose Road,
3rd Floor, Sowgarpettai,
Chennai. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree, dated 02.09.2014 made in MCOP No.458 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional Sub Court), Trichy.

For Appellant : Mr.N.Sudhagar Nagaraj

For 1st Respondent : No appearance

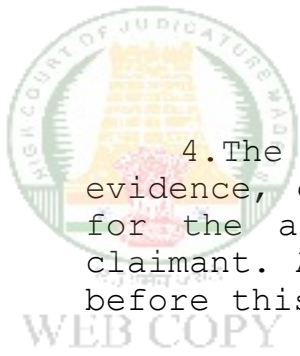
For 2nd Respondent : Mr.N.Sivakumar

JUDGMENT

Challenge made in this appeal is to the award, dated 02.09.2014 made in MCOP No.458 of 2010 on the file of Motor Accident Claims Tribunal (III Additional Sub Court), Trichy.

2.The brief facts of the case are that on 25.08.2009 at about 6.30 hours, when the claimant was riding his two wheeler TN-45-AZ-7923 on Trichy-Chennai Bypass Road, at the time, the Lorry TN-04-C-2829 came in a rash and negligent manner and dashed against the motor cycle. In that impact, the claimant has sustained fracture on the right side back and fracture in his thigh bone and also sustained grievous injuries all over the body. Immediately, he was taken to the Government Hospital, Trichy and thereafter, he was rushed to Vijaya Raghavan Hospital, Trichy, where he was taking treatment between 25.08.2009 and 10.09.2009. The injured claimant filed a claim petition seeking compensation of Rs.7,00,000/- on the ground that the offending vehicle caused the accident.

3.The claim was opposed by the 2nd Insurance Company disputing the manner of accident and their liability to pay compensation.



4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the claimant was responsible for the accident and dismissed the claim petition filed by the claimant. Aggrieved by the said order, the claimant as Appellant is before this court.

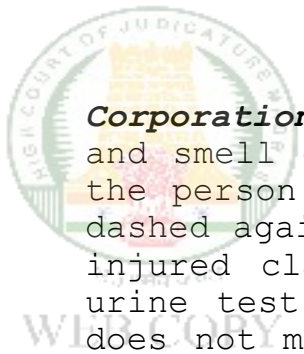
5.Heard the learned counsel appearing for either side and perused the materials available on record.

6.The learned counsel appearing for the appellant/claimant argued that RW1 stated that the injured was under the influence of alcohol, but there is no whisper about the testifying about as to whether any alcohol is found in the blood beyond the specified percentage found in the body and section 185 of the Motor Vehicles Act says that whoever while driving or attempting to drive a motor vehicle, has, in his blood, alcohol exceed 30 mg per 100 ml of blood detected in a test by a breath analyzer even there is no such test report filed before the court and mere making of endorsement in AR register will not amounts to hold that the person is under the influence of alcohol, unless there is a Lab report from the concerned authority and on contrary to that, merely Ex.P4 shows as "Patient was drowsy with alcoholic smell of breath" is against law and RW1 has not obtained any report from the Lab to the effect that the blood or urine of the injured contain alcohol and treatment was given to the injured since he was in a fit condition and the appellant/claimant is suffering with 56% of disability and due to it, it was not possible for him to do his work and prays that the Civil Miscellaneous Appeal has to be allowed. For that, the learned counsel appearing for the appellant/claimant relied up the decision of this court reported in **2013(1)TN MAC 854 (Muniyasamy Vs. Managing Director, Tamil Nadu State Transport Corporation Ltd.,)**, wherein this court has held as follows:-

"14.Alcohol/Arrack will emit smell. A drunkard loosing control of his mind and body, depends on various factors. By mere taking of alcohol and smell of alcohol, we cannot come to a conclusion that a person, had lost control of his mind body and he would have dashed against moving bus."

7.The main contention raised on the side of the appellant/claimant is that he was not under the influence of alcohol and to prove the influence of alcohol, no blood or urine test was taken and there is no document filed on the side of the respondents to prove that the claimant was under the influence of alcohol by way of blood or urine test and hence, he is entitled to compensation as claimed for.

8.On perusal of the decision reported in **2013(1)TN MAC 854 (Muniyasamy Vs. Managing Director, Tamil Nadu State Transport Corporation Ltd.,)**
<https://hcservices.ecourts.gov.in/hcservices/>



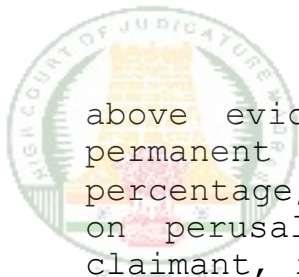
Corporation Ltd.), it is held in para 14 that mere taking of alcohol and smell of alcohol, the court cannot come to the conclusion that the person had lost control of his mind and body and he would have dashed against the moving bus. In this case also, to prove that the injured claimant was under the influence of alcohol, no blood or urine test was taken. Mere taking of alcohol and smell of alcohol does not mean that the injured lost his control and due to it, he met with an accident. But the tribunal considering the evidence of the 1st respondent and the endorsement made in the AR copy, came to the conclusion that at the time of accident, the injured was under the influence of alcohol and he himself invited the accident and hence, the Insurance Company is not liable to pay the compensation, which is not correct. Hence, it is held that the tribunal has erroneously come to the conclusion, which warrants interference of this court.

9.Further, in this case, PW1/claimant during his evidence stated that due to the accident, he sustained grievous injuries all over his body and surgery was made and prays that he is entitled to compensation.

10.PW1 during his evidence stated that only due to the rash and negligent driving of the 1st respondent driver, the accident occurred. No contra evidence was let in on the side of the respondents to prove that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent. Further, on perusal of Ex.P1 and the evidence of PW1, it reveals that the accident occurred only due to the rash and negligent driving of the 1st respondent. It is to be noted that the 1st respondent insured his vehicle with the 2nd respondent Insurance Company and there was insurance coverage at the time of accident. Hence, it is held that the respondents 1 and 2 are jointly and severally liable to pay the compensation.

11.It is seen from the records that at the time of accident, the offending vehicle was insured with the 2nd respondent Insurance Company. Hence, the 2nd respondent Insurance Company is liable to pay the compensation to the claimant and then recover the same from the owner of the vehicle. In this case, PW1 is the injured as well as the eye witness to the accident. With regard to the accident, a criminal case was registered against the driver of the Lorry. Ex.P1 FIR stands registered, on the basis of the complaint given by PW1. PW1 has given evidence stating that he sustained grievous and multiple fracture injuries all over his body and due to it, he could not walk or stand for a prolong time and he was not able to do his regular work.

12.PW2 Dr.Ravi has deposed that he examined the claimant and found that the claimant had sustained grievous injuries and multiple fracture injuries and he assessed 56% permanent disability and issued a Permanent Disability Certificate to the claimant. Based on the



above evidence, it is held that the claimant has suffered 56% permanent disability and by calculating Rs.3000/- for one percentage, this court awards **Rs.1,68,000/-** under the head. Further, on perusal of the medical bills produced on the side of the claimant, it reveals that the claimant had spend Rs.86,363/- towards medical expenses and hence, the same can be awarded to the claimant under the head of medical expenses. Further, this court awards Rs.10,000/- towards pain and sufferings; Rs.5,000/- for transportation; Rs.5,000/- for extra nourishment. In total, this court awards compensation of Rs.2,74,363/- together with interest @ 7.5.% p.a from the date of claim petition till the date of realization.

13.In the result, this Civil Miscellaneous Appeal is allowed. The impugned judgment and decree, dated 02.09.2014 passed in MCOP No.458 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Trichy is set set aside. The appellant/claimant is entitled to compensation of Rs.2,74,363/- together with interest at the rate of 7.5% p.a, from the date of claim petition, till the date of deposit. The 2nd respondent Insurance Company is directed to deposit the compensation amount together with accrued interest and costs, within a period of six weeks from the date of receipt of a order copy. On such deposit, the claimant is entitled to withdraw the entire amount by filing necessary application before the tribunal.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Motor Accidents Claims Tribunal/
III Additional Sub Court, Trichy.

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

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-16827[F] dated 21/04/2021)

C.M.A(MD)No.1066 of 2017
21.04.2021

ES (CO)

TR(09.06.2021) 4P 5C