



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Eighth day of March Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

CMP.NO.19792 OF 2017

IN CMA.NO.3208 OF 2017

LOGANATHAN

[PETITIONER]

Vs

1 HARISH

[RESPONDENTS]

(NOTICE TO R1 MAY BE DISPENSED WITH FOR THE TIME
BEING FOR WHICH SEPARATE PETITION IS FILED HEREWITH)

2 THE MANAGER,
RELIANCE GENERAL INSURANCE CO LTD,
197, PARAMATHI ROAD, NAMAKKAL-1.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the petition mentioned documents as additional documents and marked the same as EX.P.12 and P.13 in M.C.O.P.No.329 of 2016 on the file of Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Namakkal (in CMP.NO.19792 OF 2017) which is the subject matter of the above CMA.NO.3208 OF 2017.

Order : This miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.PRAKASH, Advocate for MR.C.KULANTHAIVEL, Advocate for the petitioner and of MR.S.ARUNKUMAR, Advocate for the 2nd Respondent, the court made the following order:-

Heard Mr.P.Prakash, learned counsel for Mr.C.Kulanthaivel, learned counsel for the petitioner and Mr.S.Arunkumar, learned counsel for the 2nd respondent.

2.This petition has been filed taking advantage of Order 41 Rule 27 CPC seeking permission to file additional documents in CMA No.3028 of 2017. The appellant in CMA.No.3028 of 2017 was the claimant in MCOP No.329 of 2016.



3.The aforementioned MCOP No.329 of 2016 was filed seeking compensation for injuries suffered. The matter went to trial and a judgment was also passed granting compensation for a total sum of Rs.17,77,600/- together with interest. This was by judgment dated 10.05.2017. Aggrieved by the quantum, the claimant had filed CMA No.3208 of 2017 and also aggrieved by the quantum, the 2nd respondent before the Tribunal / Insurance Company had filed CMA No.3349 of 2017.

4. The nature of injuries which the appellant/claimant had suffered in the accident were as follows:

- 1.Compound Grade III B fracture shaft of femur left side - Lower 3rd with bone loss (Around 7 cm) with raw area left thigh.
- 2.Laceration on above knee joint.
- 3.Small abrasion on the right lip.
- 4.Laceration on over middle of left thigh.
- 5.And sustained injuries all over the body.

5.The accident occurred on 05.12.2015 at around 1.00 p.m, when the petitioner was working as driver in Eicher lorry bearing Registration No.KA-01-AC-723, had moved the vehicle from Tirupur, loaded with textiles and stopped the vehicle, according to him, on the extreme left side of Salem to Dharmapuri National Highways at Thoppur. He had walked in front of the lorry to pass urine. At that time another Bharat Benz goods vehicle bearing Registration No.KA-17-R-5869 allegedly driven in a rash and negligent manner had dashed against the back of the petitioner lorry and the petitioner was stuck between both the vehicles and sustained the aforementioned injuries.

6.Thereafter, it had been stated in the affidavit filed in support of the present petition that on 07.06.2017, when the petitioner was moving inside his house with the assistance of a walker, he lost his balance and fell down and again sustained fractures. The nature of injuries now suffered by the petitioner in the year 2017, were as follows:

- 1.Left neck of femur fracture with united femur shaft fracture with DCP Insitu.
- 2.Closed bimalleolar fracture left ankle
- 3.Diabetes mellitus.

7.Claiming that he could not walk owing to the earlier injuries and had fallen down and that these injuries had been suffered owing to the earlier injuries suffered, seeking to file as additional documents namely, discharge summary for treatment of the injuries and the medical bills, the present application has been filed.

8.A counter had been filed on behalf of the insurance company and Mr.S.Arunkumar, learned counsel for the 2nd respondent had pointed out that the earlier accident took place in the year 2015 and the nature of the major injury suffered there was fracture in the shaft of the femur bone and latter was fracture in the ankle



and therefore, contended that there cannot be any possibility of there being even a remote or indirect link between the earlier injuries suffered and the present injuries complained of. It had been further contended by Mr.S.Arunkumar, learned counsel, that these are two separate and independent injuries and the latter injury would have been caused even if the earlier injuries had not been suffered by the petitioner herein.

9.After hearing learned counsel for both parties, I am of the view that the fact whether the earlier injuries were either directly or remotely or even indirectly the cause of the present injuries would be a matter of evidence. Further, the fact whether the present injuries would also have been suffered by a normal person who had not suffered the earlier injuries as the petitioner would also be a fact to be elicited only during the evidence. This reasoning necessitates the documents to be taken on record but marked only through evidence and then this Court can only analyze the evidence.

10.Therefore, for the limited purpose of recording the evidence alone, let me retain the Civil Miscellaneous Appeal here and forward the petition, counter and the two documents to be marked back to the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal, with a direction to record further evidence in MCOP No.329 of 2016 to the limited extent of marking the two additional documents, namely, discharge summary and medical bills issued by the Ganga Medical Center & Hospital (P) Ltd and record oral evidence surrounding the two documents and the injuries suffered by the claimant.

11.After recording evidence, the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal, may forward the notes of evidence and the two documents marked. To enable better appreciation, the entire documents originally received from the said Court may be forwarded by the Registry to the aforementioned Court and the evidence may be recorded and notes be forwarded to this Court, on or before 12.04.2022.

12.With the above observations, the present Civil Miscellaneous Petition is allowed.

13.List the appeal for hearing before this Court on 12.04.2022.

-sd/-

08/03/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.



TO

THE CHIEF JUDICIAL MAGISTRATE,
MOTOR ACCIDENTS CLAIMS TRIBUNAL,
NAMAKKAL.

COPY TO

THE SECTION OFFICER,
VR SECTION,
HIGH COURT, MADRAS-104.

Order

in

CMP.NO.19792 OF 2017

IN CMA.NO.3208 OF 2017

Date :08/03/2022

From 26.2.2001 the Registry is issuing certified
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DPK(11/03/2022) P