



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.03.2022

PRONOUNCED ON :04.04.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.735 of 2020

and

C.M.P(MD)Nos.7413 of 2020 and 4563 of 2021

M/s.National Insurance Company Limited,
through its Branch Manager,
No.3A, North Veli Street,
Madurai. :Appellant/Second Respondent

.vs.

1.D.Senthil Kumar :Respondent No.1/Petitioner

2.K.Pandi :Respondent No.2/Respondent No.1

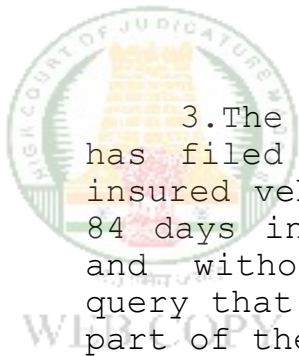
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.104 of 2017, dated 25.10.2019, on the file of the Motor Accidents Claims Tribunal/IVth Additional sub Judge, Madurai.

For Appellant	:Mrs.P.Malini
For Respondent-1	:Mr.K.Mahendran
For Respondent-2	:No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree made M.C.O.P.No.104 of 2017, dated 25.10.2019, on the file of the Motor Accidents Claims Tribunal/IVth Additional sub-Judge, Madurai.

2.Insurance Company is the appellant herein. The claim Petitioner, the first respondent herein, filed a claim petition seeking compensation for the injury sustained on 15.6.2016 at about 10.00 a.m.in Varichiyur-Thatchanenthall Road, near Border Security Force Camp Office, Idayapatti.



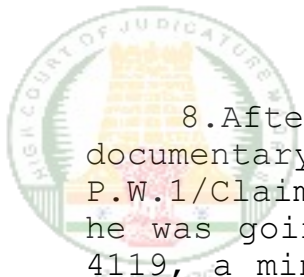
3.The second respondent before the Tribunal (appellant herein) has filed a counter statement disputing the involvement of the insured vehicle on the ground that there is a considerable delay of 84 days in filing the First Information Report before the Police and without prejudice to the above said contention, also raised a query that the accident has taken place due to the negligence on the part of the claim petitioner alone.

4.After trial, the learned Tribunal by order, dated 25.10.2019 has allowed the claim petition in part by holding that the accident has taken place due to the rash and negligent driving on the part of the driver of the vehicle which was insured with the appellant/Insurance Company and the involvement of the vehicle has been proved on the preponderance of probability and based upon the medical records, has granted compensation of Rs.3,66,700/-. Challenging the said finding and award, the appellant/Insurance Company has filed the above appeal.

5.Heard Mrs.Malini, learned counsel appearing for the appellant/Insurance Company and Mr.K.Mahendran, learned counsel appearing for the first respondent and perused the materials placed before this Court.

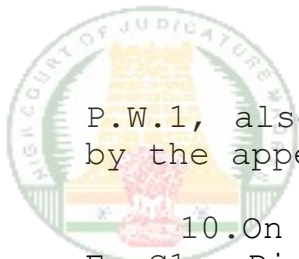
6.Mrs.Malini, learned counsel for the appellant/Insurance Company would contend that while the date of the accident is 15.6.2016, First Information Report was lodged with a delay of 84 days in the month of October 2016, whereby, it creates a doubt that the involvement of the vehicle is in collusion between the parties. It is further contended that there is no positive evidence to show that the injuries, for which, the claimant has taken treatment for the injury sustained in the alleged accident and also challenged the quantum awarded under the head pain and suffering to the tune of Rs.1,50,000/- which was granted, is on the higher side.

7.Per contra, Mr.K.Mahendran, learned counsel appearing for the first respondent would contend that there is a clear evidence on the part of P.W.1 that the accident has taken place on 15.6.2016 and has taken treatment initially and obtained receipt from Adhithya Hospital and the same is marked as Ex.P2. Subsequently, his father died on 1.7.2016. Since he was bed-ridden, he was not able to give the complaint before the Police and hence, it is the reason for the delay in filing the First Information Report before the Police Station concerned. It is further contended that the medical records Ex.P3, Ex.P4, Ex.P5, Ex.P6 and Ex.P9 were to the effect that he sustained injury in the said accident and the Medical Board has issued Ex.C1 Disability Certificate fixing the disability at 25% and made submission in support of the award. It is further contended that attendant charges, transport expenses and loss amenities were not granted by the Tribunal. The reasons assigned in Ex.P9 is unsustainable.



8.After hearing the rival submissions and on a perusal of the documentary evidence, this Court finds that the specific case of P.W.1/Claim Petitioner is that on 15.6.2016 at about 10 a.m., when he was going in the motor cycle bearing Registration No. TN 59 BE 4119, a mini van owned by the first respondent(before the Tribunal) having Registration No. TN 63 L 5086 came in the opposite direction and dashed against him and he had sustained multiple injuries and went to take treatment at Adhithya Hospital, who had issued Ex.P2-Medical Certificate to that effect. On perusal of Ex.P2, I find that the evidence of P.W.1 stand duly corroborated by Ex.P2 besides another occurrence witness P.W.2-Muthukumar has also lend his supoort to the factum of the accident and involvement of the Maruthi Van belonging to the seond respondent herein. Furthermore, on a perusal of Ex.P5-C.T.Scan Film taken in the shoulder of the claim petitioner, I find that the date of taking film also tallies with the date of the accident and hence, this Court holds that based upon the evidence of P.W.1 and P.W.2, coupled with Ex.P3 and Ex.P4, this Court comes to the conclusion that the factum of the accident, involvement of the omni van of the second respondent and that the claim petitioner had sustained injury in the said accident and accordingly, this Court holds that the claim Petitioner has proved the manner of the accident and also the injury sustained in the accident. On a perusal of Ex.P3-Discharge summary, various treatments were given by the Government Hospital for the fractures and the injuries sustained by the claim Petitioner are narrated and hence this Court comes to the conclusion that the involvement of the second respondent vehicle is proved in the manner known to law and the claim petitioner had suffered injury and for the said injury, he has filed the claim petition. On the date of the accident, the second respondent vehicle is duly insured with the appellant herein. Therefore both of them are jointly and severally liable to pay the compensation.

9.As regards Ex.P1-First Information Report, Mrs.P.Malini, learned counsel for the appellant would contend that the delay in lodging the First Information Report creates a doubt. The mere delay in filing the First Information Report need not be construed as a doubt as to his version. Ex.P1 is came into existence after 84 days. The claim Petitioner had sustained multiple injuries and his father has also died and he was taking treatment subsequently and the First Information Report has been filed with a delay and in the absence of any contra evidence to hold Ex.P1 and in view of the presence of any positive evidence probabalising the contents of Ex.P1-FIR, I find that mere delay in filing the FIR will not be neither fatal to the case of the claim petitioner nor to doubt the genuiness of the same. Since the delay has been duly explained by P.W.1 and P.W.2 and hence, the allegations of non-involvement of the vehicle insured with the appellant/Insruance Company stands negatived. Furthermore, the Insurance Company has not let in any



P.W.1, also assumes significance. Accordingly, the said plea raised by the appellant/Insurance Company is hereby stand negatived.

10.On the quantum of compensation, I find that based upon Ex.C1, Disability Certificate issued by the Medical Board, the Tribunal has fixed the Disability at 25% and Rs.3,500/- per percentage of disability was granted and accordingly granted a sum of Rs.87,500/- under the head of partial permanent disability, loss of earning for 12 months at Rs.1,08,000/- was granted. However, award under the head of pain and suffering at Rs.1,50,000/- is on the higher side and the same is reduced to Rs.60,000/- and the transportation increased to Rs.15,000/-, nutrition and extra nourishment is increased to Rs.20,000/-, loss of amenities Rs.15,000/- and as per Ex.P9 issued for the repairing of the vehicle since after claim petitioner became fit, he has done the repair work and hence Rs.24,000/- is awarded under the said head and as per Ex.P6-Medical Bill Rs.200/- is granted and accordingly, the compensation is reassessed at Rs.3,29,700/-.

11.In fine, the Civil Miscellaneous Appeal is partly allowed and the total compensation is reduced from Rs.3,66,700/- to Rs.3,29,700/- with interest at 7.5%p.a. from the date of claim petition till the date of realisation. It is reported that the appellant-Insurance Company has deposited 50% of the award amount to the credit of the claim petition. The appellant Insurance Company is directed to deposit the balance award amount with proportionate accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the amount so deposited, less the amount already withdrawn, if any, on filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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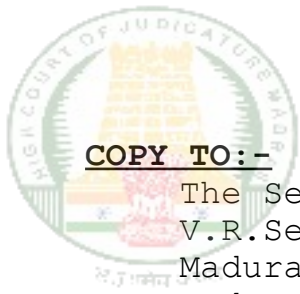
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Sub Assistant Registrar(CS)

vsn

To

The IV Additional Sub Judge,
Motor accident claims Tribunal,
Madurai



COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-16303[F] dated 04/04/2022)

+1 CC to M/s.P. MALINI, Advocate (SR-16476[F] dated 05/04/2022)

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