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C.M.A.No.2259 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

C.M.A.No.2259 of 2013

Chinnaraj

... Appellant / petitioner

Vs.

1. V. M. Tharani

2. Reliance General Insurance Co., Ltd.,  
Egmore, Chennai – 600 008.  
Respondents/Respondents

...

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 24.02.2012, made in M.C.O.P.No.597 of 2008, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Poonamallee.

For Appellant : Ms. A. Salomi  
For R1 : Ex-parte  
For R2 : Ms. Bhuvanasundari

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the claimant, challenging the dismissal of the Claim Petition in



C.M.A.No.2259 of 2013

M.C.O.P.No.597 of 2008, on the file of the Motor Accidents Claim Tribunal, (Fast Track Court-1), Poonamallee.

2. The parties are referred to hereunder according to their status and ranking before the Tribunal.

3. The case of the claimant is as follows:

On 22.02.2008, at about 7.00 p.m., the claimant was travelling as a passenger in an Auto (Three wheeler passenger vehicle), bearing Registration No.TN 22 K 6315 along with another passenger from Thiruverkadu Bus Stand to Vellappanchavadi, while the Auto reached near Meenakshi Glass Shop, Near Thiruverkadu Police Station, another Auto bearing Registration No.TN 02 Y 7391, came in the opposite direction and hit against the Auto, in which, the claimant was travelling, which resulted in causing multiple grievous injuries in all over his body and immediately, he was taken to Sri Ramachandra Medical College Hospital, for treatment. Since the accident has occurred, while the claimant was travelling as a passenger in the Auto belongs to the first respondent which is insured with the second respondent, both are liable to pay the compensation to the



C.M.A.No.2259 of 2013

claimant. The claimant filed Claim Petition claiming compensation for a sum of Rs.9,00,000/- for the injuries sustained by him.

4. The first respondent remained ex-parte before the Tribunal and the second respondent has contested the case, filed counter and contended that the petition is has bad for non-joinder of the owner and insurer of the Auto bearing Registration No.TN 02 Y 7391 and the manner in which the accident was taken place has to be proved by the claimant. The compensation claimed is also on the higher side and since there is a doubt as to whether the driver of the Auto in which, the claimant was travelled or the Auto bearing Registration No.TN 02 Y 7391 was at fault. Contributory negligence is to be properly pleaded and no such pleadings have been made. Hence prays to dismiss the Claim Petition.

5. Before the Tribunal, the claimant was examined himself as P.W.1 and Doctor, who has issued Disability Certificate is examined as P.W.2 and Exs.P1 to P7 were marked. On the side of the respondent R.W.1 was examined and no documents marked.



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6. After considering the evidence placed on record, the Tribunal in point No.1 has held that, the claimant sustained injuries due to the accident and that the driver of the Auto bearing Registration No.TN 02 Y 7391 is responsible for the accident. In point No.2 the Tribunal has held that since the offending vehicle i.e., TN 02 Y 7391 and its owner and insurer has not made as a party, the claim could not be made against the first and second respondent herein and dismissed the Claim Petition.

7. Aggrieved over the award of dismissal of the Claim Petition, the present Appeal has been filed by the claimant herein.

8. The learned counsel for the claimant has submitted that he was travelled only as a passenger in the Auto, belongs to the first respondent and he is entitled to claim compensation from any one or from both of them and she has relied on the Judgments of the Hon'ble Apex Court passed in *Khenyei vs. New India Assurance Company Ltd., and Others* reported in *2015 (1) TN MAC 801 (SC) : (2015) 9 SCC 273* and *Pawan Kumar & Another Etc. vs. M/s. Harikishan Dass Mohan Lal and Others* reported in *2014 (1) TNMAC 321*.



WEB COPY



C.M.A.No.2259 of 2013

9. Per Contra, the learned counsel for the Insurance Company has contended that it is an admitted case of the claimant that, the offending vehicle is an Auto, bearing Registration No.TN 02 Y 7391 and since the petitioner filed Claim Petition under Section 163(A) of the Motor Vehicles Act, the tortfeasor is according to the claimant is the Auto, which was not made as a party in the Claim Petition. Hence, these respondents are not liable to pay compensation and prays to dismiss the Appeal.

10. I have considered the submissions made by both sides and also perused the records.

11. In the Claim Petition, the claimant has stated that, while he was travelling as a passenger in the Auto belongs to the first respondent, yet another Auto came in the opposite direction bearing Registration No.TN 32 K 6315 and hit against them, caused severe injuries to him but he as not specifically stated that who is the tortfeasor in the occurrence. In the evidence of P.W.1 also reiterated the same. In the cross examination, he has admitted that, the vehicle, which was came in the opposite direction and hit



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against the vehicle, in which he travelled. First Information Report was registered only against the another Auto, bearing Registration No.TN 32 K 6315. The claimant contends that since the accident has taken place while he had travelled as a passenger in the first respondent's vehicle, the respondents are liable to pay compensation.

12. The Hon'ble Apex Court in ***Khenyei vs. New India Assurance Company Ltd., and Others case*** as well as ***Pawan Kumar & Another Etc. vs. M/s. Harikishan Dass Mohan Lal and Others case*** cited supra, it is held that, in case, there is a composite negligence, the claimant is entitled to claim compensation from both or any one of the joint tortfeasors. In the case of composite negligence, the apportionment of negligence between the two tortfeasors is not necessary. He can recover whole damages from any one of them also. In case, all the tortfeasors have been impleaded and the evidence is sufficient, it is open to the Court, nor the Tribunal to determine *inter se* extent of composite negligence of the drivers.

13. The present case in hand, it is not the case of the claimant that both the drivers of the vehicles are joint tortfeasors. According to the



claimant, the only Auto driver, who came in the opposite direction is a tortfeasor and since he had travelled in the vehicle belongs to the first respondent, compensation claimed from the respondents, whereas, the evidence produced before the Tribunal shows that it is not composite negligence.

14. The claim petition is filed without impleading the tortfeasors, this Court is of the view that claiming compensation from the first respondent, who is not a tortfeasor, under Section 166 of the Motor Vehicles Act, is not maintainable. However, it is admitted by the learned counsel for the Insurance Company that, the passenger of the Auto is covered by the package policy and as per the contractual obligation between the first and second respondents, the compensation to be paid to the extent of liability agreed between the parties to be paid by the insurer of the first respondent.

15. Before the Tribunal, the Insurance Company has not produced any document to show that policy coverage to the extent of compensation to be paid to the passengers of the Auto. In Ex.P6, produced



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by the claimants also has not contain annexures and schedule of payment to the extent of amount which is to be paid by the Insurance Company. Hence, this Court is of the view that as a passenger, the claimant is entitled to claim compensation from the Insurance Company, as per the policy coverage and not under Section 166 of the Motor Vehicles Act.

16. The claimant has not produced any documents to show that the income of the injured. However, it is claimed that he is a coolie worker and earning a sum of Rs.6,000/- per month and this Court fixes the monthly income of the claimant at Rs.6,000/- per month. After the accident, he was immediately admitted into Sri Ramachandra Medical College Hospital and was treated as in-patient from 22.02.2008 till 07.03.2008. Accordingly, one month salary is fixed for notional income i.e., Rs.6,000/- per month as a loss of income during the treatment period.

17. P.W.2-Dr.Subramaniam has assessed the disability of the injured as 45% and issued Disability Certificate- Ex.P7. The injured was sustained following injuries: *“Fracture at iliac region; fracture both pubic region; fracture SI (Sacroiliac) joint both sides with haematoma; fracture*



*Right Acetabulum*". This Court after considering the same, Rs.2,000/- is awarded per percentage of injuries sustained by the claimant and the said injury is not functional permanent disability and accordingly, by calculating Rs.2,000/- per percentage of 45% disability, it comes around Rs.90,000/- [45% x 2000]. Ex.P4 series are the medical bills are supported by the prescriptions attached along with discharge summary.

18. Thus, the compensation awarded by this Court is as follows:

- (1) For Disability a sum of Rs.90,000/-;
- (2) For Transport charges a sum of Rs.5,000/-;
- (3) For Damages to clothes a sum of Rs.2,000/-;
- (4) For Pain and Sufferings a sum of Rs.40,000/-.
- (5) For Medical bills as per Ex.P4 series, a sum of Rs.1,00,125/-
- (6) In all a total sum of Rs.2,37,125/- is awarded as compensation for the injuries sustained by the claimants.

19. In the result, this Civil Miscellaneous Appeal is allowed. The claimant is entitled for compensation a sum of Rs.2,37,125/- together



C.M.A.No.2259 of 2013

with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the compensation amount awarded by this Court along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.597 of 2008 on the file of the Motor Accident Claims Tribunal, Fast Track Court No-I, Poonamallee. On such deposit, the appellant is permitted to withdraw the amount awarded by this Court, along with interest and costs. The Tribunal shall disburse the amount awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. The appellant/claimant is directed to pay necessary Court fee on the awarded compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

07.08.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No



C.M.A.No.2259 of 2013

To

1. The Fast Track Judge No.-I,  
Motor Accidents Claims Tribunal,  
Poonamallee.
2. The Section Officer,  
VR Section,  
High Court,  
Madras.



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C.M.A.No.2259 of 2013

K.RAJASEKAR,J.

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C.M.A.No.2259 of 2013

07.08.2023