



C.M.A(MD)No.586 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.586 of 2019

P.Panneerselvam

... Appellant/Claimant

Vs.

1.M.Kalidoss

2.The Divisional Manager,
National Insurance Company Limited,
3A, North Veli Street, HUB.,
Divisional Office,
Madurai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of the Motor Vehicles Act, to enhance the compensation amount in M.C.O.P.No.1073 of 2017 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai.

For Appellant : Mr.K.Kumaravel

For R2 : Mr.A.S.Mathialagan



C.M.A(MD)No.586 of 2019

JUDGEMENT

WEB COPY

The present appeal has been filed by the claimant challenging an award passed by the Motor Accident Claims Tribunal, dismissing the claim petition in entirety.

2. According to the injured claimant, he was travelling as a pillion rider in a bike owned by him, which was driven by one Kalidoss. While travelling between Valar Nagar to four way track junction, the said Kalidoss had driven the motorbike in a rash and negligent manner and suddenly applied the brake, which resulted in throwing away of the claimant from the bike. The claimant sustained serious injuries and he was admitted to the hospital. The claimant claims that he incurred medical expenses to a tune of about Rs.74,830/- on the basis of Exhibit P.3 hospital records. The claimant further claimed a sum of Rs.24,113/- based upon the medical bills and another sum of Rs.5,617/- towards physiotherapy charges. The claimants produced Exhibit C.1 disability certificate to an extent of 15%.

3. Per contra, the insurance company had filed a counter contending that the claimant being the owner of the vehicle, would not be entitled to receive any compensation from the insurance company.



C.M.A(MD)No.586 of 2019

4. The tribunal after considering the oral and documentary evidence on either side had arrived at a finding that the claimant being the owner of the vehicle and there was no offending vehicle involved in the accident, the claimants will not be entitled to receive any compensation from his own insurance company. Based upon the said finding, the claim petition has been dismissed in entirety. Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the claimant, the claimant was only a pillion rider and he was not a driver, who was responsible for the rash and negligent driving of the vehicle. Therefore, he is entitled to receive compensation.

6. Per contra, the learned counsel appearing for the respondent/insurance company had pointed out in view of the insurance policy, he will not be entitled to receive any compensation. He pointed out that unless he is a third party to the contract, he will not be entitled to receive compensation.

7. I have carefully considered the submissions made on either side.



C.M.A(MD)No.586 of 2019

8. Admittedly, the claimant is the owner of the vehicle in which he had travelled as a pillion rider and he was thrown away from the said vehicle and he has sustained injuries. There is no involvement of offending vehicle in the said accident.

9. A perusal of the policy marked as Exhibit R.1 indicates that a compulsory personal accident cover of Rs.50/- has been paid for a compensation of Rs.1,00,000/-.

10. A perusal of the insurance policy indicates that if the accident has resulted in the death or loss of two limbs or sight of two eyes or one limb and sight of one eye or permanent total disablement from injuries other than the named above, he would be entitled to receive entire 100%, namely Rs.1,00,000/- (Rupees One Lakh only). In other cases, the claimant would be entitled to receive only proportionate compensation based upon the disability incurred by him. In this claim petition, the claimant had filed Exhibit C.1 wound certificate, which discloses that he had incurred a disability of 15%. Therefore, the claimant would be entitled to receive a sum of Rs.15,000/- under personal accident cover and other than this, the claimant would not be entitled to receive any other amount under the personal accident cover or under Section 166 of



C.M.A(MD)No.586 of 2019

the Motor Vehicles Act.

WEB COPY

11. In view of the above said deliberations, the 2nd respondent/insurance company is directed to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with interest at the rate of 7.5% from 06.07.2017 onwards till the date of realization.

12. With the above said observation, this Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs.

20.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gbg

To

- 1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.586 of 2019

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.M.A(MD)No.586 of 2019

20.03.2023