



**CMA(MD).No.855 of 2019**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|---------------|------------|
| Reserved on   | 26.04.2023 |
| Pronounced on | 01.06.2023 |

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.855 of 2019**

The Divisional Office Manager,  
New India Assurance Company Ltd.,  
TP/HUB,  
248B, 2<sup>nd</sup> Floor,  
Kamarajar Salai,  
Madurai – 625 009.

....Appellant/ 2<sup>nd</sup> Respondent

Vs.

1. S.Selvakumar  
2. Ramasamy

.... 1<sup>st</sup> Respondent/Petitioner  
.... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2019 passed in M.C.O.P.No.1429 of 2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.Selvakumaran  
for Mr.G.Mathavan- for R1  
: Mr.K.Prabhu – for R2



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## **J U D G M E N T**

The present appeal has been filed by the Insurance Company challenging the award of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Madurai in M.C.O.P.No.1429 of 2015 primarily on the ground of non-involvement of the vehicle.

2. According to the injured claimant, he had visited his relative's house at Keelapoongudi Village, on 30.08.2014. After visiting his relative's house, he wanted to reach his native village at Keelasaloor, which is six kilometres away from Keelapoongudi. Therefore, he requested an unknown person to drop him in his vehicle at about 09.00 p.m, on 30.08.2014. The said unknown person, who was later came to be known as Ramasamy (first respondent), had applied sudden break due to the crossing of a pig on the road. In view of the said impact, the claimant, who was travelling as a pillion rider, was thrown away from the bike and fell down on the road side pit. He had sustained grievous injuries in the said accident.





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5. The first respondent viz., owner of the two wheeler had remained ex-parte and the Insurance Company had filed a counter contending that the FIR has been registered 200 days after the accident. The Motor Vehicle Inspector has inspected the vehicle on 19.03.2015 and he has found that there were no damages to the vehicle. They have further contended that the Accident Register does not reflect the number of the vehicle and Criminal case against the first respondent has been closed as “Mistake of Fact”. The Insurance Company has further contended that the two wheeler of the first respondent was not involved in the accident and therefore they are not responsible for payment of the compensation. The Company has further disputed the quantum of compensation as prayed for by the claimant.

6. The Tribunal, after considering the Ex.P.1-F.I.R, Ex.P.2- Referral Letter to the Hospital and Ex.X2- Copy of the Final Report and also considering the deposition of P.W.1 came to a conclusion that the accident has happened only due to the rash and negligent driving of the first respondent. Based upon Ex.P.5 and Ex.P.11- Medical Bills and the



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Disability Certificate issued by the Medical Board under Ex.C.1. The Tribunal fixed the compensation at Rs.7,34,500/- (Rupees Seven Lakhs Thirty Four Thousand and Five Hundred only). The said award is under challenge in the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company has contended as follows:

(i) The alleged accident has happened on 30.08.2014 and the F.I.R was registered only on 18.03.2015, nearly after 200 days from the alleged accident. And there is no explanation whatsoever for the delay in the registration of the F.I.R.

(ii) The Criminal Case was registered against the first respondent in Crime No.51 of 2015, on the file of the Mathagupatti Police Station has been closed as “Mistake of Fact” and therefore, the accident itself has not taken place.

(iii) The Motor Vehicle Inspection report of the bike marked as Ex.P.8, discloses that the bike has not been damaged in the said accident. Therefore, the involvement of the vehicle in the said accident has not been established by the claimant.



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(iv) The claimant having got injured himself in some other manner, is attempting to stage-manage the two wheeler of the first respondent in order to claim compensation from the Insurance Company.

8. Per contra, the learned counsel appearing for the respondents had contended that after attending the village festival at about 09.00 p.m, the claimant had taken a lift in a two wheeler belonging to an unknown person to reach his village which is six kilometres away. During the said journey, the driver of the two wheeler had applied sudden break due to crossing of pig and due to the said impact the claimant was thrown away from the vehicle and he had fallen into a pit. The claimant had got himself admitted to a hospital immediately, which is disclosed under Ex.P.2- referral letter. Ex.P.2 clearly points out that the claimant has sustained injury only due to the road traffic accident. Therefore, there cannot be any doubt that the claimant has sustained injuries only due to the rash and negligent driving of the first respondent.

9. The learned counsel for the respondent had further contended that the police official of the concerned station who was examined as



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R.W.1, has categorically admitted that there was a complaint lodged before the Superintendent of Police on 07.01.2015 and a petition was filed before the High Court for registration of the F.I.R. Only pursuant to that filing of the Criminal Original Petition, an F.I.R was registered. Therefore, the delay on the part of the police officials in registering an F.I.R cannot deprive the injured claimant from claiming compensation.

10. The learned counsel appearing for the respondents had further contended that Ex.P.2 to Ex.P.5, Ex.P.11, Ex.X.1 and Ex.C.1 would clearly indicate that the claimant not only sustained injuries and taken treatment, but, also sustained disability to an extent of 40%. Therefore, the contention of the Insurance Company that the vehicle has been stage-managed in order to claim compensation is not factually correct. Hence, he prayed for confirming the award passed by the Tribunal.

11. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.



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12. The primary contention of the Insurance Company is that the involvement of the two wheeler belonging to the first respondent is doubtful and the claimant might have sustained injuries by some other manner, but attempting to claim compensation from the Insurance Company. Therefore, this Court is called upon to consider whether the accident has really happened and the vehicle belonging to the first respondent was involved in the said accident or not.

13. According to the claimant, he had visited Keelapoongudi village for attending a temple festival at about 09.00 p.m. As he wanted to return to his native village Keelachalkudi, he had got lift from the first respondent. The claimant has further contended that the accident has taken place at 09.00 p.m on the said date.

14. A perusal of Ex.P.2 indicates that at about 03.00 a.m on 31.08.2014, the claimant had reached Selviram Hospital, Melur and he was referred to Government Rajaji Hospital, Madurai. In the said referral letter it has been pointed out that the injuries are relatable to a road traffic accident that has taken place at about 09.00 p.m on 30.08.2014. Ex.P.3 is



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a letter addressed by Ortho Surgeon of Selviram Hospital to Government Rajaji Hospital, Madurai. However, the date is mentioned as 30.08.2014.

A perusal of Ex.P.4 – Discharge Summary issued by the Jeyam Hospital indicates that the claimant was admitted on 01.09.2014 and he was discharged on 02.02.2015. The history of the case referred to in the said discharge summary indicates that the accident has happened on 31.08.2014. The discrepancies between Ex.P.3 and Ex.P.4 are projected by the learned counsel appearing for the appellant to contend that there is doubt with regard to the date and timing of the accident and there is no reference about the number of the vehicle which was involved in the said accident. Ex.P.2, which is the referral letter to the Government Rajaji Hospital, Madurai, has been written at about 03.00 a.m on 31.08.2014 by the Doctor who was available at that point of time. Thereafter, at about 05.00 a.m, the Orthopedic Surgeon has given a letter to Assistant Surgeon of Orthopedic Department, Government Rajaji Hospital at Madurai. The only mistake this Court finds is that the date of the letter is mentioned as 30.08.2014 instead of 31.08.2014. It seems to be an inadvertent error. Therefore, it is clear that the claimant was admitted to Selviram Hospital even before 03.00 a.m on 31.08.2014, soon after the



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road traffic accident. Hence, the contention of the learned counsel appearing for the appellant that the claimant had sustained injuries in some other manner is not legally sustainable.

15. The deposition of R.W.1 – the police official of Mathagupatti Police Station would reveal that on 07.01.2015, while the claimant was in Jayam Hospital, Madurai, he had addressed a letter through registered post to the Superintendent of Police for registering an F.I.R. Since no F.I.R was registered, the claimant had filed Crl.O.P(MD) No.4562 of 2015, pursuant to which, an F.I.R has been registered. It is clear without any doubt that the F.I.R has been registered after 200 days. When Selviram Hospital has recorded it as RTA at about 03.00 a.m., on 31.08.2014, they should have informed the police officials for registering an F.I.R. Even after, the patient had left the hospital on the very next day, being referred to Government Rajaji Hospital, the Doctors in Selviram Hospital had not informed the police officials. Had the claimant been admitted at the Government Rajaji Hospital, as per the referral letter, it would have been certainly informed to the police. However, he got admitted to Jayam Hospital at Madurai which refers to the injuries as due



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to fall from the bike. Therefore, it is clear that the claimant has sustained injuries only due to the fall from the bike, and the delay in registering an F.I.R cannot be put against the claimant.

16. The learned counsel appearing for the appellant had contended that the F.I.R has been referred as “Mistake of Fact” and therefore, there was no accident as claimed by the claimant. A perusal of Ex.P.12, which is the order of the learned Judicial Magistrate No.I, Sivagangai reveals that the F.I.R was closed as “Time Barred”. Therefore, the contention of the learned counsel appearing for the appellant that the case was referred as “Mistake of Fact” is not factually correct. The delay on the part of the police officials in registering an F.I.R which has resulted in closure of F.I.R cannot be put against the claimant.

17. The learned counsel appearing for the appellant has further contended that the Motor Vehicle Inspector's Report marked as Ex.P.8 discloses that there is no damage to the vehicle and hence, the accident has not happened. It is the specific case of the claimant that due to sudden application of break, he was thrown away from the bike and he



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had fallen into a pit. Therefore, admittedly, the vehicle has not fallen down in order to get damaged. Consequentially, the contention that in view of no damage to the vehicle, the accident has not happened, lacks merit.

18. In the preceding paragraph this Court has arrived at a conclusion that the claimant has sustained injuries only due to the fact that he was thrown away from the bike and it is stated in the very first document viz., Ex.P.2. It is the hospital that has referred the same as a road traffic accident. Therefore, the contention of the Insurance Company that the claimant has sustained injuries by some other means and he is attempting to stage-managing the vehicle of the first respondent are not legally sustainable.

19. The Tribunal has considered Ex.C.1, which is the Disability Certificate issued by the Medical Board which reveals that the claimant had sustained 40% partial permanent disability. The Tribunal has taken into consideration that the notional monthly income of the injured claimant as Rs.7,000/- per month and has awarded a sum of Rs.42,000/-



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(Rupees Forty Two Thousand only) towards loss of income for a period of seven months due to hospitalization for partial permanent disability.

The Tribunal awarded a sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) at Rs.3,000/- per percentage of the disability. The Tribunal has awarded Medical Expenses, based upon the Ex.P.5, Ex.P.10 and Ex.P.11 to the tune of Rs.5,56,500/- (Rupees Five Lakhs Fifty Six Thousand and Five Hundred only) a sum of Rs.3,000/- (Rupees Three Thousand only) has been awarded towards Extra Nourishment, a sum of Rs.10,000/- (Rupees Ten Thousand only) has been awarded towards pain and sufferings, a sum of Rs.1,000/- (Rupees One Thousand only) has been awarded towards Transport to Hospital and a sum of Rs.2,000/- (Rupees Two Thousand only) towards Attender charges. Totally a sum of Rs.7,34,500/- (Rupees Seven Lakhs Thirty Four Thousand and Five Hundred only) has been awarded. This Court does not find that the award of the Tribunal is excessive or unreasonable under any one of the heads. Therefore, the quantum of award is confirmed.



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20. In view of the above said deliberations, there is no merit in the appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

**01.06.2023**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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To

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



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**R.VIJAYAKUMAR,J.**

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Pre-Delivery Judgment in

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**01.06.2023**