



CMA.No.1403 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1403 of 2024

S.Sathish

... Appellant

vs.

1. K.Govindasamy (Died)

2.The New India Assurance Company Limited,
Door No.161-A, Sharon Building,
East Veli Street, Madurai - 625 001.
Madurai District.

3. G.Lakshmi

4. G.Sivagami

5. G.Jeeva

... Respondents

(Respondents 3 to 5 are brought on record as LR's of the deceased first respondent vide court order dated 25.08.2023 made in C.M.P.No16734/2023 in C.M.A.Sr.No.43777/2023)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 04.11.2022 in M.C.O.P.75 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.



CMA.No.1403 of 2024

For Appellant : Mr.Ma.Pa.Thangavel
for Mr.M.Lokesh

For R2 : Ms.C.Bhuvanasundari

For RR3 to 5 : No appearance

J U D G M E N T

The appellant is the claimant in M.C.O.P.75 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that occurred on 23.09.2019.

2. The brief facts of the case of the appellant / claimant in a nutshell is as follows :

On 23.09.2019, the claimant was riding his unregistered Hero Splendor Plus motorcycle on Mettur - Mecheri Road and at about 3.30 p.m., a speeding lorry bearing Registration Number TN-29-AM-3610 was going ahead of him. The driver of the bus suddenly applied brake in the middle of the road, as a result of which, the claimant had to hit the lorry



CMA.No.1403 of 2024

from behind and sustained grievous injuries all over his body. He was immediately rushed to Government Hospital, Mettur. Subsequently, he got himself admitted in Kurinji Hospital, Salem, where he was treated as an inpatient for two weeks.

3. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-29-AM-3610 was the cause for the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the lorry remained absent and was set ex-parte. The second respondent, the New India Assurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 04.11.2022 dismissed the claim petition on the following grounds :



CMA.No.1403 of 2024

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- i. There is a delay of four days in registering FIR.
- ii. The police had filed a referred charge sheet treating the case as 'mistake of facts'.
- iii. The claimant has not examined any eyewitness to substantiate his contention that the driver of the lorry was rash and negligent in driving his vehicle.

Aggrieved over the orders passed by the Tribunal, the present Civil Miscellaneous Appeal is filed by the appellant / claimant.

6. Heard Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellant and Ms.C.Bhuvanasundari, learned counsel appearing for the second respondent.

7. A copy of the Accident Registrar (Ex.P2) issued by the Government District Head Quarters Hospital, Mettur, shows that the claimant had sustained injuries on account of the road accident that happened on 23.09.2019 and he was referred to Government Hospital, Salem. However, the claimant got himself admitted in a private hospital namely, Kurinji Hospital, Salem, where he was treated as an inpatient for



CMA.No.1403 of 2024

two weeks. In the instant case, FIR was registered on 27.09.2019 by the

Sub Inspector of Police, Karumalaikoodal Police Station, Salem, based on the intimation given by Kurinji Hospital, Salem. The Sub Inspector of Police after investigation had filed a referred charge sheet (Ex.X1) treating the case as 'mistake of facts'.

8. A perusal of the final report which includes rough sketch shows that the accident took place in the middle of the road. The driver of the lorry was going ahead of the two wheeler and according to the claimant, the driver of the lorry applied sudden brake in the middle of the road and stopped his vehicle. Nothing useful was suggested to the claimant during the course of cross examination to discredit or disbelieve his version. Merely because the police had filed a referred charge sheet treating the case as 'mistake of facts', it cannot be concluded that the claimant was rash and negligent in riding his two wheeler. The manner of accident clearly shows that the driver of the lorry was rash and negligent in driving his vehicle. Therefore, the Tribunal was wrong in dismissing the entire claim petition.



CMA.No.1403 of 2024

WEB COPY

Quantum

9. It is stated by the claimant that he was working as a labourer in a Mill earning a sum of Rs.15,000/- per month. The age of the claimant was 23 years on the date of the accident. The Medical Board attached to Government Hospital, Salem, has assessed the partial permanent disability of the claimant as 5%. A perusal of the discharge summary (Ex.P4) issued by Kurinji Hospital, Salem, shows that the claimant had sustained the following injuries :

- i. Right temporal bone fracture
- ii. Left orbital bone fracture
- iii. Left temporal bone SAH
- iv. Diffuse cerebral edema

He was admitted as an inpatient for six days from 23.09.2019 to 29.09.2019. The medical bills (Ex.P5) shows that the claimant had incurred an expenditure of Rs.72,537/- towards his medical treatment. Since there is no functional disability, the claimant can be given a sum of Rs.7,000/- per percentage of disability and thus, a sum of Rs.35,000/- (5 x 7000) is awarded towards partial permanent disability. The accident



CMA.No.1403 of 2024

took place in the year 2019. Since no proof showing the income of the claimant is filed, the notional income is fixed as Rs.10,000/- per month.

On account of the accident, the claimant would not have been in a position to attend to his regular work for at least three months and therefore, a sum of Rs.30,000/- (Rs.10,000/- X 3 months) is awarded towards loss of income.

10. The award passed by this Court under various heads is extracted hereunder:

<i>S. No.</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of income	Rs.30,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Attender's charges	Rs.5,000/-
6.	Partial permanent disability	Rs.35,000
7.	Damage to clothes	Rs.1,000/-
8.	Medical bills	Rs.72,537/-
9.	Loss of amenities	Rs.10,000/-
TOTAL		Rs.1,88,537/-



CMA.No.1403 of 2024

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11. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The orders dated 04.11.2022 in M.C.O.P.75 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur, is set aside.
- iii. The appellant / claimant is entitled to compensation of Rs.1,88,537/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- iv. The second respondent, the New India Assurance Company Limited is directed to deposit the compensation amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.75 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur, within a period of six weeks from the date of receipt of a copy of this order / uploading this order.
- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.



CMA.No.1403 of 2024

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vi. The appellant / claimant is not entitled to claim interest for the period of delay of 32 days in filing this appeal.

18.10.2024

Index : Yes/No
Speaking/Non-speaking order
mtl

To

1. The Motor Accident Claims Tribunal,
Sub Court, Mettur,

2. The New India Assurance Company Limited,
Door No.161-A, Sharon Building,
East Veli Street, Madurai - 625 001.
Madurai District.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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CMA.No.1403 of 2024

R.HEMALATHA, J.

mtl

C.M.A.No.1403 of 2024

18.10.2024