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CMA.No.2279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2279 of 2023

A.Venkatesan

... Appellant

vs.

1. E.Mahesh Kumar

2.National Insurance Company Limited,
Motor Third Party Claims Office,
No.751, Anna Salai, III Floor,
Chennai – 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 08.01.2019 in M.C.O.P.No.4518 of 2014 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant	:	Mr.Amar D.Pandiya
For R1	:	Mr.AGD. Balakumar
For R2	:	Mr.J.Chandran



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J U D G M E N T

The appellant is the claimant in M.C.O.P.No.4518 of 2014 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 28.03.2014.

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

On 28.03.2014 at about 08.30 hours, the appellant was crossing Madhya Kailash Road, Adyar. At that time, a motorcycle bearing Registration Number TN-09-BB-1971 belonging to the first respondent hit the appellant, as a result of which, he fell down and sustained grievous injuries. He was immediately rushed to VHS Hospital, Adyar. Subsequently, on 29.03.2014, he got admitted himself in Dr.Kamakshi Memorial Hospital Private Limited, Pallikaranai where he was treated as an inpatient till 01.04.2014.



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3. According to the claimant, the rash and negligent driving of the driver of the motorcycle bearing Registration Number TN-09-BB-1971 was the cause for the accident and since the said motorcycle was insured with the second respondent, the National Insurance Company Limited, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation to him.

4. The first respondent remained absent before the Tribunal and therefore, was set ex-parte. The second respondent / the National Insurance Company contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, dismissed the claim petition on the following grounds :

- i. In the FIR (Ex.P1), the claimant had mentioned that he was hit by a two wheeler driven by a woman.
- ii. The hospital records from VHS Hospital, Adyar, and the final report filed by the police were not adduced by the claimant.



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iii. The claimant had shown the first respondent as the wrong doer without any basic records.

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

6. Heard Mr.Amar D.Pandiya, learned counsel appearing for the appellant, Mr.AGD. Balakumar, learned counsel appearing for the first respondent and Mr.J.Chandran, learned counsel appearing for the second respondent.

7. In the present appeal, the claimant had produced the final report filed by J2, Adyar Police Station before the IV Metropolitan Magistrate, Saidapet in C.C.No.3720 of 2014. A perusal of the final report shows that the first respondent was charged by the Inspector of Police, J2, Adyar Police Station for the offences punishable under Sections 279, 338 IPC and Sections 134(a) (b), 187 of the Motor Vehicles Act. The claimant also filed e-court order passed by the IV Metropolitan Magistrate, Saidapet in C.C.No.3720 of 2014 which reads thus :



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“Accused present. copies furnished. Waiver and Admission Petition filed and allowed. Questioned. Admitted the offence. Accused found guilty u/s 279,338 IPC and 134(a)(b) and 411 r/w 177 M.V.act and convicted and imposed to pay a fine of Rs.1000 I.d.s.i. 6 weeks u/s 279 IPC and convicted and sentence to ITRC and imposed to pay a fine of Rs.1000 id.s.i. 6 weeks u/s 338 IPC. imposed to pay a fine of Rs.500 each id.s.i. 2 weeks each u/s 134 (a)(b) M.V. act.and imposed to pay a fine of Rs.100 id.s.i. for 1 week u/s 411 r/w 177 M.V. Act . Total fine Rs.3100. Licence suspended for one month.”

Thus, it is seen that the first respondent pleaded guilty of the offences punishable under Sections 279, 338 IPC and Sections 134(a)(b) and 411 r/w.177 M.V. Act and paid a fine of Rs.3,100/-.

8. On 04.03.2024, this Court directed Voluntary Health Services, Rajiv Gandhi Salai, Taramani to produce the Accident Register pertaining to the present accident on 28.03.2014. Accordingly, one Mr.A.Jeevarathnam, Medical Records Officer of Voluntary Health Services and Research Institute produced the Accident Register in SI.No.249 dated 28.03.2014. This Court after perusing the same directed



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the concerned officer to file a photostat copy of the Accident Register.

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9. A perusal of the Accident Register shows that the claimant had informed the doctor that he sustained injuries on account of the road accident that took place on 28.03.2014 near Madhya Kailash, Adyar. Therefore, there is no doubt with regard to the accident that happened on 28.03.2014. The final report and the judgment passed by the IV Metropolitan Magistrate, Saidapet, also shows that the first respondent was found guilty of the offences of which he was charged. Therefore, there is no difficulty in holding that the first respondent was rash and negligent in driving the motorcycle on the date of the accident. Merely because it is mentioned in the FIR that the motorcycle was driven by a woman it cannot be concluded that the first respondent was not driving the vehicle on 28.03.2014. This is because the police after conducting investigation had come to a conclusion that the motorcycle bearing Registration Number TN-09-BB-1971 was actually driven by the first respondent on 28.03.2014 and hit the claimant, as a result of which, the claimant sustained injuries.



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10. The learned counsel appearing for the first respondent also contended that the first respondent was responsible for the accident and that he paid the fine amount before the IV Metropolitan Magistrate, Saidapet. In these circumstances, negligence is fixed on the part of the first respondent. There is no dispute that the motorcycle was insured with the second respondent, the National Insurance Company Limited. Therefore, the first respondent and the second respondent are jointly and severally liable to pay compensation to the claimant.

11. It is stated by the claimant that he was working as a Security in Adyar bus depot earning a sum of Rs.10,000/- per month. The age of the claimant was 62 years on the date of the accident. The medical board had assessed his disability as 10%. The hospital records of Dr.Kamakshi Memorial Hospital Private Limited, Pallikaranai, shows that the claimant sustained hip fracture and was admitted as an inpatient for four days from 29.03.2014 to 01.04.2014. The medical bills (Ex.P4) shows that the claimant has paid a sum of Rs.1,10,778.90/- towards his medical expenses. Since there is no functional disability, the claimant can be given a sum of Rs.3,000/- per percentage of disability. The accident took place



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in the year 2014. Since no proof showing the income of the claimant is filed, the notional income is fixed at Rs.9,000/- 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.27,000/- (Rs.9,000/- X 3 months) is awarded towards loss of income.

12. 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.27,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Attender's charges	Rs.10,000/-
6.	Partial permanent disability	Rs.30,000
7.	Damage to clothes	Rs.1,000/-
8.	Medical bills	Rs.1,10,788/-
Total		Rs.2,18,788/-

13. In the result,

- The Civil Miscellaneous Appeal is allowed. No costs.
- The orders dated 08.01.2019 in M.C.O.P.No.4518 of 2014 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes



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Court, Chennai, is set aside.

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- iii. The appellant / claimant is entitled to compensation of Rs.2,18,788/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Since there is a delay of 1513 days in filing the present appeal, the claimant is not entitled to claim interest for the said period.
- iv. The second respondent, the National Insurance 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.No.4518 of 2014 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai, within a period of six weeks from the date of receipt of a copy of this order.
- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

08.08.2024

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



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To

1. The Motor Accident Claims Tribunal,
III Judge, Small Causes Court, Chennai.

2.National Insurance Company Limited,
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3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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