

**(2013) 09 MAD CK 0094**  
**In the Madras High Court**  
**Case No : C.M.A. No. 2785 of 2007**

A. Kumar

APPELLANT

Vs

D. Maragatham and National Insurance Company Ltd.

RESPONDENT

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**Date of Decision :** 13-09-2013

**Acts Referred:**

**Citation :** (2014) 1 MLJ 476

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** D. Krishnakumar, for the Appellant; D. Bhaskaran for R2 and R1 - Ex parte, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

C.S. Karnan, J.—The appellant/claimant has preferred the present appeal against the judgment and decree dated 04.04.2006, made in

M.C.O.P. No. 1237 of 1998, on the file of the Motor Accident Claims Tribunal, Sub-Court, Dharapuram, Erode District. The short facts of the

case are as follows:-

On 18.09.1998, at about 02.30 a.m., the petitioner was driving the van bearing registration No. TN 39 A6877, from Chennai to Trichy, on

National Highways Road. When the van was nearing Suruvatchoor, the driver of the van i.e., the claimant had lost control of the vehicle. While

trying to avoid collision with another vehicle, which was coming in the opposite direction. As a result, the van dashed against a road side tree and

he had sustained injuries. Therefore, he had filed a claim petition, against the owner and insurer of the vehicle, in M.C.O.P. No. 1237 of 1998, on

the file of the Motor Accident Claims Tribunal, Sub-Court, Dharapuram, Erode

District, claiming a sum of Rs. 4,00,000/- as compensation.

2. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. The Insurance Company had stated

that the accident had occurred due to the rash and negligent driving of the claimant herein and as such the claim petition is not maintainable against

the Insurance company. Further, the Insurance Company had denied the averments made in the claim petition regarding nature of injuries, mode of

treatment, age and income of the claimant. Further, it was submitted that the claimant had not produced medical records of K.J. Hospital,

Coimbatore, wherein he undertook medical treatment as alleged by the claimant.

3. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Whether the accident had occurred due to the rash and negligent driving of the claimant? and

ii. Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

4. On the petitioners' side two witnesses were examined as P.Ws. 1 and 2 and 10 documents were marked as Exs. P1 to P10 namely Accident

Register, Patient Records, Medical Bills, Wound Certificate, X-ray, Driving Licence, Disability Certificate. On the respondents' side no witness

was examined and no document was marked.

5. P.W. 1 had adduced evidence that on 18.09.1998 at 02.30 a.m., he had driven the van bearing registration No. TN 39 A6877, on the National

Highways Road with passengers. When he was nearing Suruvatchoor, a vehicle had come in the opposite direction. In order to avoid collision

with the vehicle and to safeguard the passengers, he had turned the van to the right and as a result, the van had dashed against a road side tamarind

tree.

6. Further, P.W. 1 had adduced evidence that he had driven the vehicle in a cautious manner following all traffic rules and regulations. The

unknown vehicle had come from the opposite direction in a negligent manner and as such the accident had taken place.

7. P.W. 1 had further adduced evidence that the vehicle had been insured with the second respondent Insurance Company and that he possessed

a valid driving licence. Further, he had sustained grievous injuries in the said

accident and he had been hospitalized at Ramakrishna Hospital, Coimbatore for a period of 40 days. He had sustained injuries in his left leg, right hand and also sustained fracture of bone.

8. On considering the evidences of the witnesses and on scrutinizing the documents, the Tribunal had dismissed the claim petition and assigned the reason that the claimant had driven the vehicle in a rash and negligent manner and therefore held him as a tort-teaser.

9. Against the order of dismissal, the claimant has preferred the present civil miscellaneous appeal.

10. The learned counsel appearing for the appellant has argued that the claimant was possessing a valid driving licence and he has produced the

driving licence particulars before this Court. The learned counsel has further argued that the claimant had sustained grievous injuries in the said

accident and he had been hospitalized for a period of 40 days at a private hospital. FIR had also been registered regarding the accident.

11. The learned counsel appearing for the Insurance Company has argued that the claimant was a tort-teaser and as such the accident had

occurred due to his negligence. The claimant had stated that FIR had been registered in Crime No. 912 of 1998, on the file of the Perambalur

Police Station. But, the said document has not been marked before the Tribunal. The Tribunal had decided the first issue regarding negligence

against the claimant. Therefore, the question of liability and quantum of compensation does not arise in this case.

12. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the

dismissal order of the Tribunal, this Court is of the view that the claimant had sustained injuries in the said accident, which is evident from the

documents namely accident register, medical records, medical bills, X"ray and disability certificate. As per the evidence of the claimant, FIR had

been registered in Crime No. 912 of 1998, on the file of the Perambalur Police Station. The claimant had stated that a bus had come suddenly in

the opposite direction and that in order to avoid collusion and to safeguard the passengers of the van, he had turned the vehicle to the right side and

in the process dashed it against a tamarind tree.

13. Further, this Court is of the view that normally, a driver does not wantonly

and in a negligent manner commit an accident and sustain grievous injuries on his person in order to get wrongful gain. As such, this Court is inclined to grant compensation to the claimant, since the said vehicle had

been insured with the second respondent Insurance Company, as follows:

- i. Rs. 50,000/- is awarded towards disability,
- ii. Rs. 15,000/- is awarded towards pain and suffering,
- iii. Rs. 10,000/- is awarded towards transport expenses,
- iv. Rs. 10,000/- is awarded towards nutrition,
- v. Rs. 10,000/- is awarded towards attender charges,
- vi. Rs. 10,000/- is awarded towards loss of earning during medical treatment period and convalescence period, and
- vii. Rs. 10,000/- is awarded towards medical expenses.

In total, this Court awards a sum of Rs. 1,15,000/- as compensation to the appellant/claimant, as it is found to be appropriate to the instant case.

This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

14. Therefore, this Court directs the second respondent Insurance Company to comply with this Court's findings, within a period of four weeks

from the date of receipt of a copy of this order, by way of depositing the compensation amount to the credit of M.C.O.P. No. 1237 of 1998, on

the file of the Motor Accident Claims Tribunal, Sub-Court, Dharapuram, Erode District.

15. After such a deposit having been made, it is open to the appellant/claimant to withdraw the compensation amount with accrued interest

thereon, after filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and

decree dated 04.04.2006, made in M.C.O.P. No. 1237 of 1998, on the file of the Motor Accident Claims Tribunal, Sub-Court, Dharapuram,

Erode District, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.