

**The Manager, Vs. 1.Govindaraj**

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**SooperKanoon Citation :** [sooperkanoon.com/964896](http://sooperkanoon.com/964896)

**Court :** Chennai

**Decided On :** Mar-18-2013

**Judge :** C.S.Karnan

**Appellant :** The Manager,

**Respondent :** 1.Govindaraj

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

18. 03/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.142 of 2011 & M.P.(MD)No.1 of 2011 The Manager, United India Insurance Company Limited, 23-E, E.V.R.Road, Puthur, Tiruchy. ... Appellant Vs. 1.Govindaraj 2.S.Ramu ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.318 of 2003, dated 21.12.2006, on the file of the Motor Accidents Claims Tribunal, District Additional Fast Track Court, Tiruchirappalli. !For Appellant ... Mr.J.S.Murali ^For Respondents... Mr.S.Muthukrishnan for R-1 - - - :JUDGMENT The appellant / second respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.318 of 2003, on the file of the Motor Accidents Claims Tribunal, District Additional Fast Track Court, Tiruchirappalli.

2. The short facts of the case are as follows:- The petitioner has filed the claim in M.C.O.P.No.318 of 2003, claiming compensation of a sum of Rs.2,00,000/- from

the respondents for the injuries sustained by him in a motor vehicle accident. It was submitted that on 30.11.2002, at 7 a.m., when the petitioner was walking, from North towards south, on the extreme left of road, in front of G.V.P.Tirumana Mandapam at Uppiliyapuram, the first respondent's motorcycle bearing registration not TN-48- B-3834, coming on the same road, and driven by its rider at a high speed and in a rash and negligent manner, dashed against the petitioner and caused the accident. In the result, the petitioner sustained injuries on his forehead and fracture of bone in the wrist of both his hands. He was immediately admitted at Thuraiyur Government Hospital and received treatment, as an inpatient, for one week. Subsequently, he received treatment at a private hospital for two months. Due to the injuries sustained by him in the accident, he is not able to do any work. Hence, the petitioner has filed the claim against the first and second respondents, who are the owner and insurer of the motorcycle bearing registration not TN-48-B-3834.

3. The first respondent, in his counter has denied the averments in the claim regarding nature of injuries sustained by the petitioner. It was submitted that as the first respondent's motorcycle had been insured with the second respondent at the time of accident, only the second respondent can be held liable to pay the compensation and that the claim as against the first respondent should be dismissed.

4. The second respondent, in his counter has submitted that the first respondent's vehicle driver had not been rash and negligent in his riding of the motorcycle, as alleged in the claim, and that the accident had been caused only due to the negligence of the petitioner, who had suddenly tried to cross the road, without seeing the oncoming traffic. The averments in the claim regarding medical expenses incurred by petitioner was also not admitted. It was submitted that the claim was excessive.

5. The Motor Accidents Claims Tribunal had framed two issues for consideration in the case, viz., "(i) Was the accident caused due to the rash and negligent driving by the rider of the first respondent's motorcycle? (ii) What is the quantum of compensation, which the petitioner is entitled to get?" 6. On the petitioner's side,

two witnesses were examined and five documents were marked as Exs.P1 to P5, viz., Ex.P1-copy of F.I.R, dated 01.12.2002, Ex.P2-copy of extract of accident register dated 30.11.2002, Ex.P3- copy of criminal Court judgment dated 30.12.2002 made in C.C.No.305 of 2002, Ex.P4-disability certificate dated 31.10.2006, Ex.P5-X-ray's. On the respondent's side, no witness, no documents.

7. P.W.1, the petitioner had adduced evidence that on 30.11.2002, when he was walking on the road from Uppiliyapuram towards Venkatachalapuram, on the extreme left of the road, from North to South, and when he was proceeding in front of the G.V.P.Thirumana mandapam, the first respondent's motorcycle bearing registration not TN-48-B-3834, coming on the same road and driven in rash and negligent manner by its rider, had dashed against him and caused the accident. In support of his evidence, he had marked exhibits listed as P1 to P5.

8. Though it was contended on the second respondent's side, that the accident had occurred only due to the negligence of the petitioner, who had tried to cross the road, without seeking the oncoming traffic, the second respondent had not examined the rider of the motorcycle to prove his contentions.

9. On scrutiny of Ex.P1, it is seen that the F.I.R. had been filed as against the first respondent's vehicle rider based on the complaint given by P.W.1. On scrutiny of Ex.P3, it is seen that the first respondent's vehicle rider had admitted his guilt before the Criminal Court and paid the fine. Hence, the Tribunal, on considering the evidence of P.W.1 and on scrutiny of exhibits marked as P1 and P3 held that the accident had been caused by the rash and negligent riding of the rider of the first respondent's motorcycle.

10. P.W.2, Dr.Ravi had adduced evidence that he had examined the petitioner and his medical records. He deposed that the fractured bones in the wrists of the petitioner's hands had mal-united and that due to this the movements of the petitioner's wrists have been restricted. He deposed that the petitioner would not be able to lift weights or do any hard manual labour as he used to before the accident and further deposed that the petitioner had sustained a disability of 42% and in support of his evidence, he had marked Ex.P4, disability certificate and Ex.P5-X-rays.

11. Hence, the Tribunal on scrutiny of the oral and documentary evidence awarded a sum of Rs.52,500/- as compensation under the head of disability; Rs.45,000/- was awarded under the head of pain and suffering and for loss of future prospects in life; Rs.2,000/- was awarded towards medical expenses; Rs.500/- was awarded towards transport expenses and Rs.1,000/- was awarded under the head of nutrition. In total, the Tribunal awarded a sum of Rs.1,01,000/- as compensation to the petitioner. The Tribunal on observing that the first respondent's vehicle had been insured with the second respondent at the time of accident, directed the first and second respondents to jointly and severally deposit the said compensation, together with interest at the rate of 7.5% per annum, from the date of filing the petition till date of deposit, with costs, within three months from the date of its order.

12. Aggrieved by the award passed by the Tribunal, the second respondent / United India Insurance Company Limited, Trichy, has preferred the present appeal.

13. The learned counsel for the appellant has contended in his appeal that the Tribunal had erred in not considering that there is a violation of policy and permit conditions and that the insurance company is not liable to pay compensation. It was contended that the Tribunal failed to consider the evidence of the doctor in the proper perspective and also failed to consider that the injuries could have been caused due to other reasons, other than the road traffic accident. It was contended that the Tribunal, after awarding Rs.52,500/- for disability has erred in awarding a further sum of Rs.45,000/- for future losses, which amounts to double compensation. Hence, it was prayed to set-aside the award passed by the Tribunal.

14. The learned counsel for the claimant has submitted that the claimant had sustained bone fracture injuries on both his hands and besides this, he had also sustained injuries on his forehead. The doctor had assessed the disability as 42% and after the accident, the petitioner is unable to lift any weights and as such, he experiences pain while doing his work. The Tribunal had not granted adequate compensation under the head of transport and nutrition. The learned counsel has

further submitted that the Tribunal had not granted compensation for loss of earning during medical treatment period.

15. On verifying the facts and circumstances of the case and submission made by the learned counsels on either side, and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the decisions regarding liability and quantum of compensation. However, there is a discrepancy in the heads under which the award was granted. Therefore, this Court restructures the compensation as follows:- Rs.63,000/- is awarded under the head of disability; Rs.5,000/- is awarded under the head of attender charges; Rs.5,000/- towards transport; Rs.5,000/- towards nutrition; Rs.6,000/- toward loss of earning during medical treatment period; Rs.10,000/- is awarded towards pain and suffering and Rs.2,000/- towards medical expenses and Rs.5,000/- is awarded under the head of loss of comfort. The rate of interest fixed by the Tribunal remains unaltered.

16. Hence, this Court directs the appellant to deposit the entire compensation amount, with accrued interest thereon, as per Tribunal order, within a period of four weeks from the date of receipt of a copy of this order, after deducting earlier deposit made by the appellant.

17. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P.No.318 of 2003, on the file of the Motor Accidents Claims Tribunal, District Additional Fast Track Court, Tiruchirappalli, after filing a Memo, along with a copy of this order, subject to deduction of withdrawals, if any made.

18. In the result, the above appeal is dismissed. Consequently, the order passed in M.C.O.P.No.318 of 2003, on the file of the Motor Accidents Claims Tribunal, District Additional Fast Track Court, Tiruchirappalli, dated 21.12.2006, is confirmed. There is no order as to costs. Connected miscellaneous petition is closed. r n s To The District Additional Fast Track Court, Motor Accidents Claims Tribunal, Tiruchirappalli.