

IN THE COURT OF SUBORDINATE JUDGE, JAYANKONDAM

**Present: Selvi. M. Pushparani, B.A., B.L.,
Subordinate Judge, Jayankondam.**

Friday, the 01st day of February 2019

MCOP NO.01/2017

(Ariyalur Principal District Court MCOP No.197/2012)

Selvarasu

---Petitioner

/ Vs /

1. P. Vijayakumar
2. Manager, The Oriental Insurance Company Ltd,
Kumbakondam

---Respondents

The Petition came up on 11.01.2019 for final hearing before me in the presence of Thiru.S.M. Anbumozhi, Advocate for the Petitioner, and Thiru.K.Sasikumar, Advocate for the 1st respondent and Thiru. M. Manikandan Advocate for the 2nd respondent and on hearing both side arguments and upon perusing the documents, having stood over till this day for consideration and this court deliver the following:

ORDER

The petition has been filed by the petitioner U/s. 140 and 166 of M.V.Act claiming compensation to the tune of Rs.10,00,000/- from the respondents for the injuries and damages sustained by the petitioner in the road traffic accident which took place on 27.02.2011.

1. The averments in the petition are as follows:-

On 27.02.2011 at about 3. P.M, when the petitioner was riding in his two wheeler bearing Registration No. TN 51 X 5776 from Jayankondam to Trichy road near Thularamkurichi lake from east to west, at that time the 1st respondent driver has driven the vehicle Hero Honda Splendor Plus two-wheeler bearing

Registration No. TN 68 B 9294 in a rash and negligent manner on the same direction and dashed behind the vehicle of the petitioner, in which the petitioner sustained fracture on his right leg and injuries on his head and immediately the petitioner was taken to the Government Hospital at Jayankondam and then shifted to KMC hospital at Trichy for further treatment and finally the petitioner had undergone surgery at Government Hospital at Chennai. Criminal case was registered as against the 1st respondent driver in Udayarpalayam Police Station in Cr. No. 47/11 u/s 279, 337. Hence the petitioner claimed Rs.10,00,000/- as compensation under various heads.

2.Counter filed by the 1st respondent :

All the allegation in the petitioner are denied except those which are specifically admitted herein and the petitioner is put to strict proof. The allegation with regard to date, manner and time or accident are all specifically denied as false and the petitioner is put to strict proof of the same. The accident had not happened as falsely alleged by the petitioner. The allegation with regard to the treatment and period of treatment and disability are all specifically denied as false and the petitioner is put to strict proof. It is submitted that the petitioner by himself had intruded with the vehicle which was caught in the sand unnecessarily. He had not informed the driver about his presence by the side of the vehicle. The same was the negligence on the part of the petitioner that he had been by the side of the vehicle without any intimation of rescuing the vehicle. So the petitioner had by himself committed with the accident. Hence this respondent is not liable to pay any compensation to the petitioner. The allegation regarding the age, occupation and income of the petitioner are specifically denied as false and the petitioner is put to strict proof of the same. Hence the petition has to be dismissed with the cost of this respondent.

3.Counter filed by the 2nd respondent :

All the allegation in the petitioner are denied except those which are specifically admitted herein and the petitioner is put to strict proof. The time, date and manner of accident are denied as false and incorrect. It is specifically denied that this respondent is the insurer of the Bike bearing Registration No. TN 68 B 9294. The driver of the 1st respondent's vehicle driver not having valid driving licence on the date of accident. This is violation of policy condition. At the time of the accident the petitioner was riding a two-wheeler and he has without any signal suddenly crossed the road, at the time the 1st respondent's two wheeler coming behind the petitioner and the two wheeler rider noticed that the petitioner, so he immediately applied the break and stopped the bike. But the petitioner himself dashed the 1st respondent's stopped bike. Hence, the petitioner only sole liable for the accident. So, the accident is due to the contributory negligence in the part of the petitioner. The petition is bad for non-joinder of necessary party. Hence the petition has to be dismissed with the cost of this respondent.

4. Points for consideration are:-

1. Whether the accident took place due to the rash and negligent driving of the driver of the Hero Honda splendor Plus two wheeler bearing Registration No. TN 68 B 9294?

2. Whether the petitioner is entitled to compensation? If so, from which respondent?

3. What is the quantum of compensation the petitioner is entitled?

5. On the side of the Petitioners PW1 and PW2 were examined and Ex. P1 to Ex.P17 were marked. On the side of the 1st respondent neither oral evidence nor documentary evidence were adduced. On the side of the 2nd respondent RW1and RW2 were examined and Ex.R1 to Ex.R3 were marked.

Point no. 1 :

1. Whether the accident took place due to the rash and negligent driving of the driver of the Hero Honda splendor Plus two wheeler bearing Registration No. TN 68 B 9294?

6. The 2nd respondent being the insurer of the said vehicle was permitted under section 170 of MV Act to raise the defences available to the owner of the vehicle.

7. In order to prove the claim of the petitioner, the petitioner was examined as PW1 and one Muthukumaran was examined as PW2. PW1 in his evidence has stated that on 27.02.2011 at about 3. P.M, when the petitioner was riding in his two wheeler bearing Registration No. TN 51 X 5776 from Jayankondam to Trichy road near Thularamkurichi lake from east to west, at that time the 1st respondent driver has driven the vehicle Hero Honda Splendor Plus, two-wheeler bearing Registration No. TN 68 B 9294 in a rash and negligent manner on the same direction and dashed behind the vehicle of the petitioner, in which the petitioner sustained fracture on his right leg and injuries on his head and immediately the petitioner was taken to the Government Hospital at Jayankondam and then shifted to KMC hospital at Trichy for further treatment and finally the petitioner had undergone surgery at Government Hospital at Chennai. Criminal case was registered as against the 1st respondent driver in Udayarpalayam Police Station in Cr. No. 47/11 u/s 279, 337. PW1 produced Ex.P1 the copy of the FIR filed against the driver of the vehicle. PW2 in his evidence has stated about the manner of accident as stated by PW1.

8. The 1st and 2nd respondents have denied the manner of the accident and the 1st respondent has stated that the petitioner by himself had intruded with the vehicle which was caught in the sand unnecessarily and he had not informed the driver about his presence by the side of the vehicle. The same was the negligence on the

part of the petitioner that he had been by the side of the vehicle without any intimation of rescuing the vehicle. So the petitioner had by himself committed with the accident. Hence this respondent is not liable to pay any compensation to the petitioner. The 2nd respondent has also denied the manner of accident and stated that at the time of the accident the petitioner was riding a two-wheeler and he has without any signal suddenly crossed the road, at the time the 1st respondent's two wheeler coming behind the petitioner and the two wheeler rider noticed that the petitioner, so he immediately applied the break and stopped the bike. But the petitioner himself dashed the 1st respondent's stopped bike.

9. The Hon'ble High Court of Madras has laid down in the case of Muthu /Vs/ The Managing Director, TNSTC, reported in 2014 (1) TNMAC 156 that the Tribunal is bound to determine whose negligence is the cause of the accident and that the same may be determined on the basis of preponderance of probabilities and that the issue does not require proof beyond reasonable doubt as in the case of criminal cases. This Tribunal is therefore bound to ascertain, on the basis of the principle of preponderance of probabilities, whose negligence was the cause of the accident.

10. In this case, PW1 has deposed about the occurrence that the 1st respondent driver has driven the two-wheeler in a rash and negligent manner and dashed upon the petitioner's vehicle and Ex.P1- FIR was filed on behalf of the petitioner, whereas the manner of accident was denied by both the respondents as discussed above. But both the respondents have denied the manner of accident in contra with each other. Hence the defence about the manner of the accident as claimed by the respondents are not acceptable. Hence it is clear that the accident was happened due to the rash and negligence of the 1st respondent's driver bearing Registration No. TN 68 B 9294 and point no. 1 is answered accordingly.

Point no. 2:**2. Whether the petitioner is entitled to compensation? If so, from which respondent?**

11. In order to prove the claim of the petitioner, PW1 and PW2 were examined and Ex.P1 to Ex.P17 were marked. As already discussed in the point no. 1 the court has come to the conclusion that the accident took place only due to the rash and negligent of the 1st respondent's driver. Ex.R3 – Insurance Policy was marked on behalf of the 2nd respondent, in which the insurance stands in the name of 1st respondent P. Vijayakumar as the owner of the vehicle and period of insurance stands from 22.02.2011 to 21.02.2012, since the accident was occurred on 27.02.2011, the insurance policy was in force at the time of accident.

12. It is the main contention of the 2nd respondent that at the time of accident, the driver of the 1st respondent was not hold any licence, for which RW1 and RW2 was examined and RW1 in his evidence has stated that she is working in RTO and according to the document in their office, it is found that the driver has not obtained any driving licence from his office. RW2 in his evidence has stated that the driver of the 1st respondent vehicle has not hold any licence at the time of the accident. On perusal of entire records, the driving licence of the 1st respondent driver was not filed by the petitioner. Hence this court comes to the conclusion that the 1st respondent driver was not holding any licence at the time of the accident. Even though there is a violation of policy, the insurance policy was in force. Hence it is concluded that the 2nd respondent is initially liable to pay the compensation to the petitioner for the injuries sustained by him in the occurrence and the same then recover from the 1st respondent. This point is answered accordingly.

Point. No. 3 :**3. What is the quantum of compensation the petitioner is entitled?**

13. The petitioner has claimed Rs. 10,00,000/- under various heads as

compensation. On perusal of connected records, it seems that the petitioner was immediately taken to the Government Hospital at Jayankondam and then he was shifted to the Trichy KMC Hospital and the discharge summary of KMC hospital, Trichy was marked as Ex.P3 and Ex.P4 and the medical bills issued by the Trichy, KMC Hospital was marked as Ex.P2. Further the petitioner has taken treatment at Chennai, Rajiv Gandhi Hospital and discharge summary for the Chennai, Rajiv Gandhi Hospital was marked as Ex.P5 and Ex.P6. Further the petitioner has taken treatment at Chidambaran, Rajamuthaiya Hospital and the medical bills issued by the hospital was marked as Ex.P7 and Ex.P8. From the above documents, it reveals that the petitioner suffered grievous injuries. The disability certificate for the petitioner issued by the medical board, Perambalur on 28.02.2018 was marked as Ex.P17 and the disability for the petitioner is fixed as 25% by the medical board. On perusal of case records, it is found one another medical certificate for the petitioner issued by the medical board, Perambalur on 19.04.2017 and the disability for the petitioner is fixed as 40%. Even though two disability certificates are available in this case, the later one is taken into consideration and the disability is fixed as 25% for the petitioner.

14. According to the ratio laid down by the Hon'ble High Court of Madras in the case of National Insurance Co.Ltd /Vs/ G.Ramesh and P. Yoshuva reported in 2013 (2) T N MAC 583 for each percentage of disability, the petitioner is entitled to Rs.3,000/- as compensation. Hence it is found that for 25% of partial disability the petitioner is entitled to Rs.75,000/- ($25 \times 3000 = \text{Rs. } 75,000$).

15. As far as the evidence of PW1 is concerned, he has stated that at the time of surgery in Trichy, KMC hospital, the plate was inserted in his leg along with two screws, later the screw was slipped and the x-ray along with two slipped screws was marked on behalf of the petitioner as Ex.P9 and Ex.P10 and then the petitioner had under gone surgery to remove the screw and the x-ray after the removal of screw was marked as Ex.P12 and then again the petitioner has

undergone surgery and five screws were placed. Hence from the above perusal, it reveals that the petitioner has undergone several surgeries due to the slip of the screws, in his leg. Hence, the compensation for his pain and sufferings are fixed as Rs.60,000/-. Further the petitioner has stated that he was earning Rs.15,000/- working as mason and after the accident he could not be able to do his work as earlier before the accident. Further for the income of the petitioner, no proof on behalf of the petitioner. Hence his notional income is fixed as Rs.7,000/-.

16. At the time of occurrence, the 1st respondent vehicle dashed behind the petitioner's vehicle, hence the damage is fixed is Rs. 1,000/-. On perusal of Ex.P15, trip sheet, it reveals the expenses incurred for the petitioner for transport and hence the petitioner is entitled for the bills amounts to Rs. 17,500/- and in total Rs.20,000/- is fixed for a transport, attender and extra nourishment. It is also held that the petitioner is entitled for loss of partial income for 3 months at the rate of Rs.7,000/- amounting to Rs.21,000/-. The petitioner has produced medical bills and it was marked as Ex.P2, Ex.P7 and Ex.P8. In Ex.P2, the amount of Rs.12,280/- was added twice, hence Rs.12,280/- was deducted from Ex.P2 and the total amount in Ex.P2 comes around Rs.20,835/-.

17. The total compensation for the petitioner under various heads as discussed above is as follows:

1.	25% partial disability(25x 3000 =75,000/-)	Rs. 75,000/-
2.	Medical bills (Ex.P2-Rs.20,835),(Ex.P7 – Rs.4,201) and (Ex.P8 – Rs.2,656)	Rs. 27,692/-
3.	Loss of income	Rs. 21,000/-
4.	Pain and Sufferings	Rs. 60,000/-
5.	Damages to clothing and articles	Rs. 1,000/-
6.	Transport, Attender and Extra nourishment	Rs. 20,000/-
Total		Rs. 2,04,692.00

Finally this petition is partly allowed with proportionate cost. The 2nd respondent is initially liable to pay a sum of Rs.2,04,692/- as compensation to the petitioner and then recover from the 1st respondent. The award amount shall carry the interest at the rate of 7.5% p.a., from the date of petition till the date of realization. The award amount shall be deposited within 2 months from the date of award by the 2nd respondent directly into the account standing in the name of State Bank of India, Jayankondam Branch, Motor Accident Claim Account no.37369389492, IFSC NO.SBIN0000998, MICR.621002005). The 2nd respondent is further directed to file the compliance memo intimating the deposit of award amount into court immediately after such deposit, after giving notice to the petitioner, failing which, the 2nd respondent shall be liable for the consequences thereof. No interest for the default period if any. Balance court fee to be paid within a month, failing which the petitioner is not entitled to get the interest amount from the date of award till the payment of balance court fee. Advocate fee is fixed at Rs. 7,094/-. Total award amount shall be deposited in a fixed deposit in any one of the nationalized bank for a period of 3 years.

Dictated to the Steno-Typist and typed by her directly, corrected and pronounced in Open Court this the 01th day of February 2019. Sd/--

Subordinate Judge
Jayankondam

Petitioner side witnesses:-

PW1 – Thiru. Selvarasu
PW2 – Thiru. Muthukumaran

Petitioner side exhibits:-

Ex.P1 – Certified copy of FIR
Ex.P2 – Medical bills
Ex.P3 - Discharge summary
Ex.P4 - Discharge summary
Ex.P5 – Discharge summary
Ex.P6 – Discharge summary
Ex.P7 – Medical bills

Ex.P8 – Medical bills
Ex.P9 – X-ray
Ex.P10 – X-ray
Ex.P11- X-ray
Ex.P12 – X-ray
Ex.P13 – X-ray
Ex.P14 – Wound certificate
Ex. P15 – Trip sheet
Ex. P16 – Xerox copy of family card
Ex.P17- Disability certificate

1st Respondent Side Witnesses & Exhibits:- Nil

2nd Respondent side witnesses :

RW1 – Tmt. Lakshmi
RW2 – Tmt. Indira

2nd Respondent side exhibits :

Ex.R1 – Letter from Transport Department
Ex.R2 – Letter from Transport Department
Ex.R3 – Insurance policy

Sd/--

Subordinate

Judge

Jayankondam

