

IN THE FORUM OF THE MOTOR ACCIDENT CLAIMS, COIMBATORE.

PRESENT: THIRU.R.VENKATASUBRAMANIAN B.A., B.L.
Special Subordinate Judge,
Coimbatore.

Thursday, the 21th day of November, 2019

M.C.O.P.No.01/16

S. Karthick

. . . Petitioner.

- Vs. -

1. D. Sajeev

2. United India Insurance Co., Ltd.,

....Respondents.

.....

This petition came on 29-08-2019 for final hearing before me, in the presence of Thiru. S. Deepakumar, Advocate for the petitioner, the respondents 1 & 2 are being called absent and set exparte and upon perusing the petition, counter and other connected materials and having stood over till this day for consideration, this Forum made the following

ORDER : -

This petition is filed by the petitioner on 08-12-2015 under section 166(1)(a) of M.V. Act 1988, Amended 54/1994 r/w. Rule 3(1) of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.30,00,000/- from the respondents along with interest and costs.

2. THE PETITION AVERMENTS IN BRIEF :

As per the averments of the petition on 25-09-2015 at about 10.30 A.M the petitioner was riding his Honda Shine bearing Regn. No KL 50 D 3328 on the Anakatti Road, in front of Auditor Thottam, Jambukandi from east to west direction carefully and cautiously. At that time the Mahendra jeep bearing Regn. No. KL 09 E 4629 driven by the 1st respondent came in the opposite in a rash and negligent manner without blowing horn and dashed against the petitioner 's vehicle. Due to the accident, the petitioner fell down on the road and sustained severe injuries with bloodshed on his left leg fracture, face and multiple injuries all over his body.

Immediately the petitioner was taken to the Ganga Hospital, Coimbatore and admitted as inpatient from 25-09-2015 to 22-10-2015.

The petitioner who was aged about 24 years, having a hale and healthy body and was a building contractor with monthly income of Rs.20,000/- at the time of accident, has come forward with this petition claiming compensation of Rs.30,00,000/- from the respondents for the injuries and pain and sufferings sustained by him in the said accident which was caused by the 1st respondent herein.

3. First and second respondents remained absent and were set exparte.

4. NOW THE POINTS FOR CONSIDERATION ARE :-

1. Whether the accident was happened due to the rash and negligent act of the 1st respondent?
2. Whether the petitioner is entitled to claim compensation? If so, what is the quantum?
3. By whom the compensation has to be paid?
4. To what relief, the petitioner is entitled?

5. On the side of the petitioner no oral evidence was adduced inspite of several opportunities and hence this Forum suo motto closed the evidence on the side of the petitioner.

6. POINT No.1 :-

Whether the accident was happened due to the rash and negligent act of the 1st respondent?

As per the averments of the petition on 25-09-2015 at about 10.30 A.M the petitioner was riding his Honda Shine bearing Regn. No KL 50 D 3328 on the Anakatti Road, in front of Auditor Thottam, Jambukandi from east to west direction carefully and cautiously. At that time the Mahendra jeep bearing Regn. No. KL 09 E 4629 driven by the 1st respondent came in the opposite in a rash and negligent manner without blowing horn and dashed against the petitioner 's vehicle. Due to the accident, the petitioner fell down on the road and sustained severe injuries with bloodshed on his left leg fracture, face and multiple injuries all over his body.

Immediately the petitioner was taken to the Ganga Hospital, Coimbatore and admitted as inpatient from 25-09-2015 to 22-10-2015.

From the perusal of the pleadings in the petition it can be seen an accident had occurred involving two motor vehicles. When no evidence is adduced on either side, the party who wishes the court to believe the existence of certain fact is the person on whom the burden lies. In this case, the burden is upon the petitioner to prove that the 1st respondent was at fault and responsible for the accident. Since the petitioner has not adduced any evidence either oral or documentary to prove the negligence of the 1st respondent, he would naturally fail. Hence in this case the petitioner has failed to prove the negligence of the 1st respondent. Anyhow, the accident by use of motor vehicle is clear from the pleadings in the petition. Therefore the claim of the petitioner is treated u/s. 140 of the Motor Vehicles Act which deals with liability to pay compensation in certain cases on the principle of no fault. As per sub clause (3) of sec 140 of the Act, in any claim for compensation under sub Sec (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other persons. Even the question of contributory negligence would not also arise for consideration. So the petitioner need not prove the negligence of the owner of the vehicle involved in the accident as his claim comes under the purview of sec 140 of the Act. Accordingly Point No.1 is answered by this Forum.

7. POINT No.2 : -

Whether the petitioner is entitled to claim compensation? If so, what is the quantum?

On the basis of the decision arrived by this Forum while answering the earlier point that the claim of the petitioner comes under the purview of the no fault liability the petitioner is entitled for compensation as per sub sec (2) of sec 140 of the Act.

8. Quantum :

As per the averments in the petition the petitioner is said to have sustained 1) Left leg fracture 2) Severe face injury 3) Multiple injuries all over the body. Sec 142 of the Act provides the nature of injuries which can be described as permanent disablement. As per Sec 142 of the Act, destruction of any member or joint shall be deemed to have suffered permanent disablement. Since the petitioner sustained fracture in left leg resulting destruction of joint is entitled for compensation as per sub clause (2) of Sec 140 of the Act. Accordingly this Forum awards a fixed sum of Rs.25,000/- in respect of permanent disablement of the petitioner.

9. POINT No.3 : -

By whom the compensation has to be paid?

The 1st respondent is the driver cum owner of the vehicle and the 2nd respondent is the insurer of the vehicle at the time of accident. As per the no fault liability the owner of the vehicle is liable to compensate the petitioner for the injuries sustained by him. According to the 2nd respondent the 1st respondent's vehicle was insured with the 2nd respondent at the time of accident. Thus the 2nd respondent as the insurer of the vehicle belonging to the 1st respondent should indemnify and protect the interest of the 1st respondent. Accordingly the respondents 1 & 2 are jointly and severally liable to pay the compensation awarded to the petitioner. Accordingly this Forum answers Point No.3.

10. POINT No.4 : -

To what relief, the petitioner is entitled?

Taking into consideration the facts and circumstances involved in this petition this Forum comes to the conclusion that the petitioner is entitled to get compensation of Rs.25,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of its realization along with proportionate costs.

In the result, this petition is partly allowed with interest and proportionate costs. The petitioner is entitled to get a sum of **Rs.25,000/-** from the 1st & 2nd

respondents as compensation along with subsequent interest at the rate of 7.5% p.a. from the date of this petition till its realization. The compensation amount has to be paid by the 2nd respondent and the 2nd respondent is hereby directed to deposit the same into the Bank account of this Forum in the State Bank of India, Main Branch, Coimbatore in A/c No. 35988204194, IFSC Code No.SBIN0000827 within one month with costs. Further the petitioner is directed to furnish his proof of address, Name of Bank and its Branch with IFSC Code, Account Number by submitting the first page of the Bank pass book duly attested, PAN Card, Aadhaar Card if available. The petitioner is entitled to receive the entire compensation amount directly. The Advocate fee is fixed at **Rs.1,000/-**. The petitioner has to pay the deficit Court fee if any within a month. If the petitioner has not paid the court fee within the prescribed time limit he is not entitled for the interest for the subsequent period. The excess Court fee is ordered to be refunded to the petitioner. The petitioner is not entitled to get any interest for the default period if any. The parties are entitled to the free copy of this award.

Dictated to the Steno-typist, typed by her directly in the system, corrected and pronounced by me in open Court this the **21th day of November, 2019.**

Sd. R.VENKATASUBRAMANIAN

SPECIAL SUBORDINATE JUDGE,
SPECIAL SUB COURT TO DEAL WITH
MCOP CASES, COIMBATORE.
21.11.2019.

LIST OF WITNESES EXAMINED FOR THE PETITIONER'S SIDE : NIL

LIST OF EXHIBITS MARKED FOR THE PETITIONERS SIDE : NIL

LIST OF WITNESS EXAMINED FOR THE 2nd RESPONDENT'S SIDE: NIL

LIST OF DOCUMENTS MARKED FOR THE 2nd RESPONDENT'S SIDE: NIL

SSJ., CBE.,

DRAFT / FAIR ORDER

M.C.O.P.No.01/16

DATED: 21.11.2019

SSJ, CBE.

True copy