



CMA(MD).No.811 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**RESERVED ON : 14.06.2024**

**PRONOUNCED ON : 20.06.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.811 of 2017**

S.Selvakumar

.....Appellant/Claimant

Vs.

1.M.Rajaram

2.U.Maheshkumar

3.The Branch Manager  
IFFCO-TOKIO General  
Insurance Company Ltd.,  
No.148, 2<sup>nd</sup> Floor, Vinayaga Complex  
Opposite to Ganesh TVS Show Room  
Erode Town  
Erode District

....Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicle Act, 1988 to allow the appeal and modify the decree and judgment passed in MCOP.No.94 of 2012 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Dindigul dated 17.06.2017 by enhancing the award amount to the Appellant with proportionate interest.



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For Appellant : Mr.R.Karunanidhi  
For R1 & R2 : No appearance  
For R3 : Mr.V.Sakthivel

## **JUDGMENT**

The claimant in MCOP.No.94 of 2012 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Dindigul has filed the above appeal challenging the exoneration of insurance company.

2.The injured claimant had filed the above claim petition on the ground that while he was walking on the road at 9.00 p.m on 08.11.2011, a two-wheeler owned by the second respondent, driven by the first respondent came in a rash and negligent manner and dashed against him. The said vehicle was insured with the third respondent. According to the claimant, he had sustained grievous injury and he made a claim of Rs.7,00,000/-.

3.The insurance company had filed a counter contending that the accident has happened only at 01.15 p.m and not at 9.00 p.m on 08.11.2011. Therefore, at the time when the accident had taken place on 08.11.2011, the vehicle was not insured with the insurance company. It was further contended that the previous policy of the said vehicle had expired on 28.09.2011. Therefore, on the date of the accident, the vehicle was not insured either with the Oriental Insurance Company or with the third respondent. Hence, they



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have prayed for exoneration of the insurance company.

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4. The Tribunal after considering the oral evidence and documents filed on either side, had arrived at a finding that the accident has taken place at 01.15 p.m on 08.11.2011, but the policy has been taken only at 03.13 p.m. Based on the above said facts, the Tribunal had exonerated the insurance company and proceeded to mulct the liability upon the owner of the two-wheeler and has awarded a compensation of Rs.65,635/-. The owner of the two-wheeler has not chosen to challenge the said award. The present appeal has been filed by the claimant challenging the exoneration of the insurance company.

5. According to the learned counsel for the appellant, the medical records would disclose that the accident has taken place, if not at 9.00 p.m certainly after 03.13 p.m on 08.11.2011. All the medical records would disclose that the injured claimant had reached the hospital by 8.00 p.m on the said date and had taken a x-ray at about 8.38 p.m. The claimant in his deposition has categorically deposed that he had reached the hospital by 8.00 p.m and x-ray was taken at about 8.38 p.m. Therefore, it is clear that the accident has taken place only after the policy was taken. The Tribunal without properly appreciating the oral evidence and the medical records had erroneously exonerated the insurance company.



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6. Per contra, the learned counsel appearing for the respondent/insurer had relied upon Exhibit P2-wound certificate which was marked through PW1 and it reveals that the injured claimant had reached hospital at 01.15 p.m on 08.11.2011.

7. The petitioners have examined the medical record officer as PW3 on their side. He has categorically stated that the timing mentioned in the wound certificate is correct. The learned counsel for the insurer had also relied upon the cross examination of PW1 to contend that the timing mentioned by the claimant in the F.I.R and the claim petition is not correct. If the previous policy for the said vehicle had expired on 28.09.2011 and the next policy had commenced only from 03.13 p.m on 08.11.2011. Therefore, at the time of accident, there was no subsisting policy and hence, the Tribunal was right in exonerating the insurance company.

8. I have considered the submissions made on either side and perused the material records.

9. As per averments in the claim petition, the accident has taken place at 9.00 p.m on 08.11.2011. The F.I.R has been lodged on the same date at 10.30 p.m alleging that the accident has taken place at 9.00 p.m. In the additional counter, the insurance company has taken a specific stand that the accident has taken place at about 01.15 p.m prior to the commencement of the



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policy. Therefore, the entire burden is upon the claimant to establish that the accident has taken place after commencement of the insurance policy.

10.Exhibit P2 is the wound certificate and the same has been marked through the injured claimant. It reveals that the claimant had reached the causality ward of the hospital at 01.15 p.m on 08.11.2011. The Medical Record Officer of the said hospital has been examined as PW3 on the side of the claimant. During cross examination, he has categorically admitted that the entry of timing as 01.15 p.m in the wound certificate is correct. The claimant has been examined as PW1. He was suggested by the insurer during the cross examination, whether the timing mentioned as 01.15 pm in the would certificate is correct, he has answered 'yes'. Therefore, it is clear that the accident has taken place before 01.15 p.m on 08.11.2011.

11.A perusal of Exhibit R1 reveals that the policy commenced from 03.13 p.m on 08.11.2011of the third respondent insurance company. The previous policy issued by the Oriental Insurance Company for the offending vehicle had expired on 28.09.2011. The present policy has been issued with effect from 03.13. p.m on 08.11.2011 by the third respondent.



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12.The claimant having reached the casualty ward at 01.15 p.m on 08.11.2011, it is clear that at the time of accident, no insurance policy was subsisting. The Tribunal therefore was right in exonerating the insurance company.

13.The learned counsel for the claimant had further contended that the compensation awarded by the Tribunal is on the lesser side in not properly fixing the monthly income of the injured claimant. The claimant having sustained fracture in the right leg and on the back side of the head, the disability ought to have been properly decided by the Tribunal. The Tribunal was not right in fixing 10% as permanent disability. Hence, he prayed for enhancement of compensation.

14.The driver and owner of the offending vehicle, though have been served, they have not appeared either person on through their counsel.

15.Under Exhibit P8 disability certificate, the total percentage of disability has been fixed at 37%. The Tribunal had fixed at 10%. Considering the fact that there were two fractures in the right knee and plates have been inserted, this Court is of the considered opinion that the disability could be fixed at 30% and for each percentage of injury, a sum of Rs.3000/- could be awarded.



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**WEB COPY** 16. In view of the above said facts, the award of the Tribunal is re-assessed as follows:

Loss of income during treatment	Rs. 9,000.00
Permanent disability (Rs.3000/-x30 percentage)	Rs. 90,000.00
Transportation	Rs. 5,000.00
Damage to articles	Rs. 1,000.00
Extra nourishment	Rs. 5,000.00
Medical expenses	Rs. 14,635.00
Pain and suffering	Rs. 15,000.00
<b>Total</b>	<b>Rs.1,39,635.00</b>

17. The award of the Tribunal is enhanced from Rs.65,635/- to Rs. 1,39,635/- which would carry an interest at the rate of 7.5% per annum from the date of claim petition. The exoneration of the insurance company is hereby confirmed. The respondents 1 and 2 in the claim petition are directed to pay the said compensation along with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the said amount.



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**WEB COPY** 18. With the above said directions, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

**20.06.2024**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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To

1. The Motor Accident Claims Tribunal  
/ Chief Judicial Magistrate, Dindigul
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.





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**R.VIJAYAKUMAR,J.**

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Pre-delivery Judgement made in  
**C.M.A(MD)No.811 of 2017**

**20.06.2024**