

**(2010) 09 MAD CK 0291**

**Madras High Court**

**Case No:** C.M.A. No. 1475 of 2006, C.M.P. No. 6621 of 2006 and Cross. Objection No. 23 of 2008

The New India Assurance Co.,  
Ltd.

APPELLANT

Vs

Dayanidhi and Raj  
<BR>Dayanidhi and Raj Vs The  
New India Assurance Co., Ltd.

RESPONDENT

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**Date of Decision:** Sept. 8, 2010

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 170
- Penal Code, 1860 (IPC) - Section 279, 338

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

**Bench:** Single Bench

**Advocate:** K. Ravindranath, in C.M.A. No. 1475 of 2006 and Cross. Objn. No. 23 of 2008, for the Appellant; T. Ferry, for R1 in C.M.A. No. 1475 of 2006 and Cross. Objn. No. 23 of 2008, for the Respondent

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**Judgement**

C.S. Karnan, J.

The above Civil Miscellaneous Appeal has been filed by the Appellant/the New India Assurance Company Ltd., against the Award and Decree, dated 13.06.2005, made in M.C.O.P. No. 161 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri, awarding a compensation of Rs. 1,56,500/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of the compensation.

2. Both appeal and cross objection arising out of the same judgment, they are taken up together and disposed of by a common judgment.

3. Aggrieved by the above said award and decree, the Appellant/the New India Assurance Company Ltd., has preferred the above appeal to scale down the

compensation amount passed by the Tribunal.

4. The short facts of the case are as follows:

On 07.06.2003, at about 09.00 hours while the Petitioner was travelling as a pillion rider in a motorcycle bearing registration No. TN09 E2315, driven by its driver in a rash and negligent manner and suddenly it skidded. Due to which, the Petitioner sustained grievous injuries. The accident had occurred only due to the over speed, rash and negligent driving of the driver of the motorcycle bearing registration No. TN09 E2315. The first Respondent is the owner of the vehicle and the second Respondent is the insurer of the vehicle. Therefore they are jointly and severally liable to pay compensation to the Petitioner to the tune of Rs. 3,00,000/- along with interest.

5. The second Respondent/The New India Assurance Company Ltd., filed a counter and resisted the claim, which reads as follows:

The allegation that on 07.06.2003, about 09.00 Hrs while the Petitioner was travelling as Pillion rider in a Motor Bike bearing Reg. No. TN09 E2315 was driven by its driver in a rash and negligent manner and skidded as a result of this accident the Petitioner got grievous injuries as stated about. The accident occurred only due to the over speed, rash and negligent driving of the driver of the Motor Bike bearing Reg. No. TN09 E2315. The first Respondent as the owner of the vehicle and the second Respondent is the insurer of the vehicle are jointly and severally and vicariously are liable to pay compensation to the Petitioner to the tune of Rs. 3,00,000/-along with interest and Advocate"s fees etc. are all hereby denied and puts the Petitioner to strict proof of the same.

This Respondent denies the allegation contained in paragraphs 23 and 23(a) totally and puts the Petitioner to strict proof of the manner in which the accident occurred.

This Respondent denies the allegations contained in paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 13 & 13(a) so as to the Age, occupation, name and address of the employer, monthly income, place, date and time of accident, name of police station, starting and destination of journey, name and address of medical officer, period of treatment and disability of work are all false and puts the Petitioner to strict proof of the same.

This Respondent denies all the allegations contained in paragraphs 21 & 21(a) Part Ia, d, & e Part II, h, i j so as compensation claimed, loss of earning, transport to hospital, extra nourishment, compensation for pain and sufferings, compensation for continuing or permanent disability if any, compensation for the loss of earning power and puts the Petitioner to strict proof of the same by this Respondent.

This Respondent respectfully submits the total compensation of Rs. 3,00,000/- as claimed by the Petitioner is highly in accessible, arbitrary and claimed only to boost up the claim.

This Respondent respectfully submits that the said accident is not reported by the first Respondent to this Respondent and not produced the vehicular particulars, policy copy and driving license of the driver for verification and its return. Hence, the Petitioner has to prove the validity of the same.

It is specifically denied that the vehicle, motor bike bearing registration No. TN09 E2315 was insured with this Respondent on the date of accident and the Petitioner is put to strict proof thereof. This Respondent is not liable to pay for the above claim.

This Respondent specifically denies that the first Respondent's owner of the vehicle bearing registration No. TN09 E2315 has effective license/endorsement to drive the vehicle in question on the date of accident and hence this Respondent is not liable to indemnify the first Respondent.

This Respondent craves leave to file additional counter if necessary at a later date.

This Respondent craves leave to contest the claim on all grounds that may be available to the first Respondent u/s 170 of M.V. Act, 1988.

In view of the facts and circumstances stated above this Respondent is not at all liable to pay compensation to the Petitioner.

6. After considering the plea and the counter statement, the learned Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) At whose negligence the accident had occurred?

(ii) Is the Petitioner entitled to get compensation? If so, what is the quantum of compensation?

7. On the Petitioner's side, the Petitioner was examined as PW1 and one Dr. Thiagarajan was examined as PW2. Further, 12 documents were marked as Exs.P1 to P12 namely Ex.P1-First Information Report, Ex.P2-Accident Register, Ex.P3-Wound Certificate, Ex.P4-Discharge Summary, Ex.P5-Motor Vehicle Inspector's Report, Ex.P6-Insurance Policy, Ex.P7-Charge Sheet, Ex.P8-Salary Certificate, Ex.P9-Leave Certificate, Ex.P10-Medicine Bills, Ex.P11-Disability Certificate and Ex.P12-X-ray. On the Respondents' side, no witnesses were examined and no documents were marked.

8. The claimant, PW1, had adduced evidence stating that on 07.06.2003 at about 09.00 a.m. he was travelling on the motorcycle bearing registration No. TN09 E2315 as pillion rider. His friend, one Moorthi, had driven the vehicle on the Periyapalayam-Vengal road. When the motorcycle nearing Periyapalayam and at that point of time, the vehicle went out of control, since the rider of the motorcycle drove in a rash and negligent manner. As such, the accident had taken place. Regarding the said accident, a criminal case was registered by the C3 Periyapalayam Police Station, Thiruvallur District, in Crime No. 401 of 2003, under Sections 279 and 338 I.P.C. Immediately after the said accident, the injured was admitted in Stanley

Hospital, as inpatient from 07.06.2003 to 08.07.2003, wherein surgical operation was also conducted. Further, he adduced evidence stating that he was on three months medical leave during the treatment period. As such, he lost his monthly income. Supporting his claim he also marked Ex.P9, Leave Certificate. PW2, Dr. Thiagarajan, had adduced evidence stating that he examined the claimant and also verified the relevant medical records and assessed the disability of the claimant as 45%. Supporting his version, he has also marked Ex.P11, Disability Certificate and Ex.P12, X-ray.

9. After considering the evidence of PW1 and PW2 and after verifying the entire documents, which were marked by the claimant, the Tribunal had come to the conclusion that the accident had happened only due to the rash and negligent driving of the first Respondent/rider, as such, the first Respondent and the second Respondent, Insurance Company is liable to pay compensation to the claimant and awarded the compensation as follows:

Loss of income : Rs. 1,27,500/-

Pain and suffering : Rs. 10,000/-

Nutrition : Rs. 10,000/-

Transport Expenses : Rs. 5,000/-

Damages to cloths : Rs. 1,000/-

Medical expenses : Rs. 3,000/-

In total, the Tribunal awarded a sum of Rs. 1,56,500/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of the compensation. Further, the Tribunal directed the Respondents to deposit the said compensation amount into the credit of the M.C.O.P. No. 161 of 2003, passed by the learned Motor Accidents Claims Tribunal, Sub Court, Ponneri, within a period of one month from the date of its order. In turn the said compensation to be deposited in a nationalised bank for a period of three years in a fixed deposit scheme and the claimant was permitted to withdraw the interest from the deposited amount, once in six months. Accordingly ordered.

10. Aggrieved by the above said award and decree, the Appellant/New India Assurance Company Ltd., has preferred the above appeal to scale down the compensation amount passed by the Tribunal.

11. The learned Counsel appearing for the Appellant vehemently argued that the award of Rs. 1,27,500/- granted under the head of loss of income is not pertinent in this present case. Further, the learned Counsel argued that Rs. 10,000/- under the

head of pain and suffering and Rs. 10,000/- under the head of nutrition are on higher side. Further, the learned Counsel rightly pointed out that the disability certificate issued by the Doctor, is an arbitrary one. Hence, the learned Counsel prays this Court to scale down the compensation amount awarded by the Tribunal.

12. The learned Counsel appearing for the first Respondent argued that the claimant is the Police Constable, attached to the Police Department of the State. He met with an accident and sustained grievous bone injury. He had undergone treatment for one month as inpatient at Stanley Hospital. Thereafter, he had undergone treatment as out-patient. In the said accident, he sustained bone fracture injuries, for which plastic surgical operation was also conducted. Further, the learned Counsel pointed out that the Doctor, who is the competent person, assessed the disability at 45%, which is a medical opinion. So, the learned Judge cannot set aside the percentage as suo-moto. Further, the learned Counsel argued that the claimant was on medical leave for a period of three months. As such, he lost his monthly income. Further, he argued that at the time of treatment he was an inpatient and an attender was engaged, the same was not considered by the learned Tribunal. After well considering the evidence of PW1 and PW2 and relevant documents marked by the claimant, the Tribunal granted a compensation of Rs. 1,56,500/- with 9% interest per annum from the date of petition till the date of payment of the compensation, which is a fair and equitable. Hence, the learned Counsel prays this Court to dismiss the appeal.

13. Considering the facts and circumstances of the present case and arguments advanced by the learned Counsel appearing on either side, the Award and Decree, dated 13.06.2005, made in M.C.O.P. No. 161 of 2003, passed by the learned Motor Accidents Claims Tribunal, Sub Court, Ponneri, is on the higher side. Hence, this Court is willing to interfere to scale down the compensation amount passed by the Tribunal. As such, this Court modifies the compensation amount as follows:

- i. Rs. 90,000/- under the head of loss of income for 45% disability,
- ii. Rs. 3,000/- awarded by the Tribunal towards Medical Bills, this Court confirms the same,
- iii. Rs. 10,000/- awarded by the Tribunal under the head of pain and suffering, this Court enhances to Rs. 15,000/- under the same head,
- iv. Rs. 10,000/- awarded by the Tribunal under the head of nutrition, this Court confirms the same,
- v. Rs. 5,000/- awarded by the Tribunal under the head of transport expenses, this Court confirms the same,
- vi. Rs. 1,000/- awarded by the Tribunal under the head of damage to cloths, this Court confirms the same,

vii. This Court awards a sum of Rs. 12,717/- under the head of loss of income during the treatment period,

In total, this Court awards a sum of Rs. 1,36,717/- as compensation, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation.

14. This Court directs the Appellant/New India Assurance Co., Ltd., to deposit the above said compensation amount of Rs. 1,36,717/-, together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 161 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri, within a period of eight weeks from the date of receipt of a copy of this Order. After such deposit is being made, the claimant is permitted to withdraw the entire compensation amount, lying in the credit of the M.C.O.P. No. 161 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri, after filing necessary payment out application, in accordance with law, subject to deduction of withdrawal if any.

15. In the result, the Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 13.06.2005, in M.C.O.P. No. 161 of 2003, passed by the Motor Accident Claims Tribunal, Sub Court, Ponneri, is modified. Consequently, connected civil miscellaneous petition and cross objection are closed. No costs.