

**IN THE COURT OF THE SPECIAL DISTRICT JUDGE,
(TO DEAL WITH MCOP CASES), ERODE.**

Present: Tmt. K.R. LEELA, B.A.,B.L.,
Special District Judge,
(To deal with MCOP Cases),
Erode.

Monday, the 31st day of July 2023
(2054 Thiruvalluvar Aandu, Sobakrithu year, 15th day of Aadi)

MCOP No.759 / 2017
CNR.No.TNED17-000715-2017

A. Rajamanickam, aged about 31 years, son of Angamuthu, residing at Armed Reserve Police Quarters, A1 Block, Anaikalpalayam, 46 Pudur village, Erode – 638 002.

..... Petitioner

/ Vs. /

- 01) M. Sasikumar, aged about 35 years, son of Muthu, residing at 11893, Kadachanallur, S.P.B. Colony, Tiruchengode, Namakkal District.
- 02) Sriram General Insurance Co., Ltd., E8 RIICO Industrial area, Sitapura, Jaipur, Rajasthan – 302 022.
- 03) TATA AIG General Insurance Company Ltd., having its branch office at May Flower Building, 1st Floor, No.72, Dr. Balasundaram road, Coimbatore District – 641 018.
(Impleaded as per order in I.A.No.2/2021 dated 22.03.2021 and Amended as per order in I.A.No.3/2021 dated 22.03.2021.)

.....Respondents.

This petition came up before me on 26.07.2023 for final hearing in the presence of Thiru. T. Senthilkumar Counsel for Petitioner; Advocate Thiru. K.K. Dhanasekar appeared for 2nd respondent; Advocate

Thiru. R.K. Gopalakrishnan appeared for 3rd Respondent; the 1st Respondent failed to appear before this court on receipt of notice and they were called absent and set exparte; upon perusing the material records and hearing the arguments of both side counsels and having stood over for consideration till this day, this court delivered the following:

ORDER

Date of Petition	:	04.04.2017
Award amount	:	Rs.88,132/-
Interest on the award amount	:	7.5% p.a. from the date of petition till the date of realization of award amount. (Excepting the period from 03.12.2020 to 08.03.2023.)
Interest to be paid from which date?	:	04.04.2017
<u>Details of Cost.</u> 1. Court fee for the award amount 2. Vakalath Stamp 4. Stamp on documents 5. Batta charges 6. Batta preparation fee 7. Advocate fee	<u>Rs.</u> 314 - 17 - 35 - 85 - 10 - 4,258	Rs.4,719/-
Compensation amount deposited (if any)	:	- Nil -
Court fee paid along with petition	:	Rs.876/-
Additional Court fee paid (if paid on any orders)	:	- Nil -
Balance court fee to be refunded the petitioner	:	Rs.562/-
Proportionate cost	:	Rs.4,719/- (excluding the balance court fee of Rs.562/- to be paid by the petitioner)

Last date for payment of court fee	: 10.08.2023.
Default period	: 03.12.2020 to 08.03.2023
Petitioners' Income Tax Permanent Account No.(PAN card No.)	: - Not filed -

The petitioner has filed this petition u/s.166 of the Motor Vehicles Act to pass an award to direct the respondents to pay jointly and severally a sum of Rs.5,00,000/- to the Petitioner towards compensation together with cost and interest at the rate of 12% p.a. from the date of petition till realization of the entire amount.

2) The averments in the petition in brief:

(i) On 02.11.2016 at about 7:00 PM the petitioner after completing his college work was returning towards Erode on the Sankagiri - Pallipalayam road opposite to Jai Surya Departmental Store. When he was carefully riding his two-wheeler from North to South on the extreme left side of the road, the 1st respondent who was coming in the opposite direction from South to North, driving his TATA ACE vehicle, bearing Reg.No. TN 33 BC 5987, in full speed and negligent manner and without signal and without following the traffic rules took a right turn and dashed against the petitioner. Due to the sudden hit the petitioner was thrown off and sustained greivous injuries in the head, left foot, toe, left eyebrow, left shoulder and all over the body. The 1st respondent's rash and negligent driving is solely responsible for the above said accident.

(ii) The Petitioner was immediately taken to KMCH Hospital, Erode and was an inpatient in the hospital from 2.11.2016 to 7.11.2016. Due to the accident, the petitioner is getting recurring headache, giddiness, severe

shoulder pain and left hand movements are very much restricted. The disability of the petitioner is permanent. The petitioner is aged 31 years and he was hale and healthy at the time of accident. He was employed as a Lecturer at Excel Engineering College, Komarapalayam and due to the accident he is not able to go to his job or concentrate in his teaching due to recurring headache and giddiness. The petitioner's income and salary are completely stopped. Hence the Petitioner is claiming a total compensation of Rs.5,00,000/- for the permanent disability. A case was registered against the 1st Respondent by the Pallipalayam police station in Crime number 675/2016 under section 279 and 337 of IPC. The 1st respondent is the owner cum driver and the 2nd respondent is the insurer of the vehicle involved in the accident. Hence all the respondents are jointly and severally liable to pay the compensation to the petitioner.

(iii) During the pendency of the claim petition, the 2nd respondent filed counter statement stating that the offending vehicle is not insured with the 2nd respondent. Therefore, on verification of the Motor Vehicle Inspector's Report, the petitioner came to know that the offending vehicle is insured with the 3rd respondent. Hence, the petitioner filed I.A.No. 2 of 2021 to implead the 3rd respondent and the same was allowed on 12.03.2021. The claim may be allowed as prayed for.

3) The averments of Counterstatement filed by the 2nd respondent in brief.:

The petition is false, vexatious and not sustainable either in law or on facts. The 2nd respondent vehemently denies the allegations that the TATA ACE van, bearing Reg. No. TN 33 BC 5987, was insured with it on

the date of accident. The 2nd respondent did not issue any policy of insurance for the said vehicle in favour of the 1st respondent covering the period of accident. The petitioner is bound to prove the alleged rashness and negligence on the part of the 1st respondent. The nature and extent of injuries said to have been sustained in the alleged accident is not admitted as true. The treatment, medical expenses, the permanent disability, age and occupation of the petitioner are all denied as false and the petitioner is bound to prove the same. The compensation claimed is excessive and the petition may be dismissed with costs.

4) The averments of Counterstatement filed by the 3rd respondent in brief.:

The averments made in the petition are false, frivolous, vexatious, and not maintainable in law and on facts. This respondent does not admit any of the allegations in the petition except those that are specifically admitted herein. The manner of accident stated by the petitioner is false. At the time of accident, the 1st respondent was not having valid and effective driving licence to drive his vehicle. Hence this respondent is not liable to pay any amount to the petitioner. The accident had happened only due to the carelessness of the rider of the two-wheeler (i.e.) the petitioner, only the 1st respondent drove his TATA ACE bearing Reg. No. TN 33 BC 5987 in a slow and steady manner by following all the traffic rules and regulations from South to North direction and at that time the rider of the 2 Wheeler that is the petitioner drove his motorcycle from North to South direction and failed to notice the oncoming vehicle and came into the line of motion of the 1st respondent's vehicle and invited the accident. Hence this

respondent is not liable to pay any compensation to the petitioner. Two vehicles are involved in the accident, therefore the owner and insurance company of the motorcycle are necessary party to the proceedings. The petitioners bad for non joint of necessary parties. The rider of the two-wheeler that is the petitioner, drove his vehicle without any licence. As per the terms and conditions of the insurance policy, the 1st respondent shall ensure that the vehicle was driven by the person with his permission and also who had a valid and effective driving licence, that the vehicle was plied with the valid fitness certificate, that the vehicle had a valid insurance of policy covering the vehicle on the date of accident. The 1st respondent had violated the policy conditions and therefore this respondent is not liable to pay any amount to the petitioner. The compensation claimed by the petitioner is arbitrary and excessive. The claim petition may be dismissed with costs.

5) On consideration of the petition, and counter, the points for consideration are:

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of the TATA ACE bearing Reg. No. TN 33 BC 5987 or due to the negligence of the petitioner in riding the two-wheeler?
- 2) Whether the respondents are liable to pay compensation to the petitioners?
- 3) If so, to what amount of compensation the petitioner is entitled to?

6) On the Petitioner's side PW1 was examined and Ex.P1 to Ex.P11 were marked. On the side of respondents RW1 and RW2 were examined

and Ex.R1 to R3 were marked. On the Witness side Ex.X1 was marked.

7) The counsel for 3rd Respondent filed a petition u/s. 170 of M.V. Act in I.A.8/2023 and the same was allowed on 26.06.2023.

8) Heard both sides. Documents perused.

9) Point No.1:

The claim petition has been filed seeking compensation for the injuries sustained by the injured petitioner in the road accident which took place on 02.11.2016. The petitioner claims that on 02.11.2016 at about 7:00 PM he after completing his college work was returning towards Erode on the Sankagiri - Pallipalayam road opposite to Jai Surya Departmental Store and that when he was carefully riding his two-wheeler from North to South on the extreme left side of the road, the 1st respondent who was coming in the opposite direction from South to North, driving his TATA ACE vehicle, bearing Reg.No. TN 33 BC 5987, in full speed and negligent manner and without signal and without following the traffic rules took a right turn and dashed against the petitioner.

10) The respondents 1 is the owner, and respondent 3 is the insurer of the above said TATA ACE vehicle, bearing Reg.No. TN 33 BC 5987. The 1st respondent has remained exparte. The 3rd respondent has filed counter statement denying any negligence on the part of the said vehicle driver while he drove the above said vehicle and that the petitioner and voluntarily invited the accident by his own negligence.

11) In order to prove the manner of accident the injured petitioner has deposed as PW1 and marked the FIR, Observation Mahazar, Rough sketch, and the Final report as Ex.P1 to P4 respectively.

12) A two wheeler and a TATA ACE were involved in the accident. PW1 is the injured petitioner / rider of the two-wheeler. He was also the complainant based on which Ex.P1 FIR was registered on the car driver. PW1 has denied any negligence on his part and deposed in lines with the petition averments regarding the manner of accident. The charge sheet was also filed as against the 1st respondent. He has remained exparte without denying his own negligence. The negligence is not seriously disputed by the 3rd respondent either. There is no rebuttal evidence. Hence it is held that the accident occurred only due to the rash and negligent driving of the driver of the TATA ACE vehicle, bearing Reg.No. TN 33 BC 5987 and also that there was no contributory negligence on the part of the petitioner. Point No.1 is answered accordingly.

13) Point No.2:

It was found in answer to the previous point that the accident occurred due to the rash and negligent driving of the driver of the TATA ACE vehicle, bearing Reg.No. TN 33 BC 5987. It is not disputed that the respondents 1 and 3 are the owner and insurer of the said vehicle. The petition was originally filed stating that the 2nd respondent was the insurer of the offending vehicle. The 2nd respondent filed a counter statement denying contract of insurance between himself and the owner of the said vehicle. There afterwards the petitioner had impleaded the 3rd respondent stating that the offending vehicle was in fact insured with the 3rd respondent and not with the 2nd respondent. At the stage of arguments, the learned counsel for the petitioner filed a memo dated 26.07.2023 stating that the claim against the 2nd respondent was not pressed. The memo was recorded.

Therefore, the 2nd respondent is exonerated from the claim. The 3rd respondent has the contractual liability to indemnify the 1st respondent for the compensation payable by him with regard to the accident caused by the driver of the insured vehicle.

14) However the 3rd respondent has also disputed his liability on the grounds that the vehicle owner had violated the policy conditions by permitting the driver to drive the insured vehicle without proper driving license. The 3rd respondent is bound to prove the defence of policy violation. An official of the 3rd respondent firm deposed as RW2 that the insured vehicle driver did not possess driving license at the time of occurrence and that legal notices were issued from their company to the vehicle owner and driver to produce the driver's driving license details and that Ex.R1 is the copy of the policy covering the offending vehicle. Ex.R2 is the copy of the notice issued to the 1st respondent. RW2 has also produced the unserved returned postal cover as Ex.R3. He further deposed that inspite of such notice, the vehicle owner did not produce the driving license details of his driver.

15) An employee of the RTO has deposed as RW1 on the basis of Ex.X1 Authorization letter that Muthu, S/o. Sasikumar, Thiruchengode Taluk, SPB Colony, Kadachanallur Door No.11893 was not issued with any driving license. RW1 has produced Ex.X1 Report from the concerned RTO to that effect.

16) Based on the evidence of RW1 and RW2 as well as Ex.X1, Ex.R2 and Ex.R3, it is held that the insured vehicle was plied without proper driving license on the date of occurrence. Therefore, it is found that

the defence of policy violation is proved.

17) It is therefore concluded that the 3rd respondent is initially liable to pay the compensation with regard to the accident and then recover the same from the owner/1st respondent. The petition is dismissed as against the 2nd respondent. Point No. 2 is answered accordingly.

18) Point No.3:

The petitioner has claimed Rs.5,00,000/- under various heads as compensation. As per Ex.P7 petitioner's Aadhar Card, his Date of birth is 06.06.1985 which shows that he was 31 years old on the accident occurred. PW1 has produced the Discharge Summary issued by Erode, KMCH Hospital as Ex.P11 which discloses that he had sustained head injury, concussion brain and scalp degloving injury and that he was treated with wound debridement and suturing and that he was an inpatient from 02.11.2016 to 07.11.2016. During cross examination PW1 has admitted that his injuries were described as simple injuries in the wound certificate and that he had no objection for the same. Hence it is held that this petitioner sustained simple injuries in the head region. Considering the same, it is held that this petitioner is entitled to Rs.30,000/- as compensation for the injuries. As per Ex.P6 Hospital bills, he had spent an amount of Rs.50,132/- towards his treatment. It is held that he is entitled to the same towards medical expenses. Considering the treatment period and the distance between the spot of occurrence and the treatment hospital, it is held that the petitioner is entitled to Rs.3,000/- towards transport, and Rs.5,000/- towards attender and nutrition charges.

19) Hence it is found that the petitioner is entitled to a total sum of **Rs.88,132/-**. The 3rd respondent is initially liable to pay the compensation and then recover the same from the owner/1st respondent. The petition is dismissed as against the 2nd respondent. Point No.3 is answered accordingly.

In the result, it is ordered

- 01) That this petition is allowed in part with proportionate cost,
- 02) That the petitioner is entitled to get a total compensation of **Rs.88,132/-** with interest at the rate of 7.5% from the date of filing till date of deposit of the entire award amount along with proportionate cost. (Excepting the period from 03.12.2020 to 08.03.2023.) The 3rd respondent is initially liable to pay the compensation and then recover the same from the owner/1st respondent.
- 03) That the 3rd respondent is directed to deposit the said amount within two months in the Account of this Court – Account of Special District Judge (MACT) Erode **Current Account No.35980122773 with IFSC Code: SBIN0007897 maintained at State Bank of India, Town Branch, Erode.**
- 04) That on such deposit, the petitioner is entitled to get the entire award amount along with proportionate interest and cost after appeal time.
- 05) That the above said compensation amount of the petitioner shall be transferred from the Court Account to the petitioner's Savings Bank Account No.36540815648 IFSC: SBIN0012786 of State Bank of India, Mecheri Branch, Erode through RTGS.
- 06) That out of the total court fee of Rs.876/- paid with the claim petition, after deducting the court fee of Rs.314/- for the award amount the petitioner is entitled to get refund of the balance court fee of Rs.562/- by filing proper petition after appeal time.

- 07) The petition is dismissed as against the 2nd respondent.
 08) That the petitioner's side Advocate fee is fixed at Rs.4,258/-

This order is dictated to the Steno-Typist, typed by her in the computer, taken print through printer, corrected and pronounced by me in the open court, on this the 31st day of July 2023.

**Special District Judge,
 (Motor Accident Claims Tribunal Judge)
 Erode.**

Exhibits marked on the side of Petitioners :

- | | | |
|--------|------------|--|
| Ex.P1 | 05.11.2016 | True copy of First Information Report. |
| Ex.P2 | 05.11.2016 | True copy of Observation Mahazar. |
| Ex.P3 | 05.11.2016 | True copy of Rough sketch. |
| Ex.P4 | 24.11.2016 | True copy of charge sheet. |
| Ex.P5 | 05.11.2016 | Xerox copy of FIR Status details. |
| Ex.P6 | 07.11.2016 | Hospital bill issued by KMCH Speciality Hospital, Erode. |
| Ex.P7 | - | Copy of Aadhar identity card of petitioner. (Xerox copy compared with original.) |
| Ex.P8 | - | X-Ray films. (4 Nos.) |
| Ex.P9 | - | Scan films. (3 Nos.) |
| Ex.P10 | - | Copy of Savings Bank Account Pass book of petitioner. (Xerox copy compared with original.) |
| Ex.P11 | 07.11.2016 | Discharge summary issued by KMCH Hospital, Erode. |

Exhibits marked on the side of Respondents:

- Ex.R1 - Policy copy for the TATA ACE bearing Reg.No. TN 33 BC 5987.
- Ex.R2 15.06.2023 Copy of legal notice issued to 1st Respondent by the counsel for 3rd respondent along with postal receipt.
- Ex.R3 - Returned cover addressed to 1st respondent.

Exhibits on the side of Witness.

- Ex.X1 10.07.2023 Authorization letter issued to RW1 by the R.T.O. Thiruchengode.

List of witnesses examined on the Petitioners' side

- PW1 Thiru. Rajamanickam (Petitioner)

List of witness on the Respondents' side:

- RW1 Tmt. M. Ramya, Junior Assistant, R.T.Office, Thiruchengode.
- RW2 Thiru. N. Kavichakkaravarthi (Legal Officer, TATA AIG General Insurance Company, Coimbatore.)

**Special District Judge,
(Motor Accident Claims Tribunal Judge)
Erode.**

Special District Court,
(MACT) Erode.
MCOP.No.759/2017,
Draft / Fair order,
Date – 31.07.2023.
