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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.160 OF 2006

Dr.Thirupurasundari,
W/o.Dr.Azhagappan,
No.235, Girivalam Road,
Adiannamalai Village,
Tiruvannamalai District. ... Appellant/Petitioner

Versus

1. Sampathkumar,
2. The Divisional Manager,
   The Oriental Insurance Co., Ltd.,
   No.1, Katpadi Road,
   Vellore. ... Respondents/Respondents

Prayer :
Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.08.2005 made in M.C.O.P.No.13 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvannamalai.

For Appellant : Mr.S.Kumaradevan

For Respondents : Mr.N.Sampath

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 12.08.2005 made in M.C.O.P.No.13 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvannamalai.

2. The brief facts of the case are as follows :

On 18.03.2002, at about 9.30 a.m., when the claimant was proceeding to the hospital in her TVS 50 Motorcycle bearing Registration No.TN-32-X-3614, near Kanchi Adi Annamalai at the left side of the road, at that time, the vehicle belonging to the first respondent bearing Registration No.TN-25-A-9760 driven

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by its driver in a rash and negligent manner, hit against the claimant's vehicle as a result she sustained injuries all over the body including fracture. The two wheeler driven by the claimant was also damaged in the said accident. The claimant was taken to the hospital at Thiruvannamalai and subsequently to a private hospital, where she underwent the treatment. A Criminal case was registered in Thiruvannamalai Gramiya Police Station in Crime No.191 of 2002. The claimant has claimed a sum of Rs.6,00,000/- as compensation.

3. On the other hand, the 1st respondent/owner of the alleged vehicle has denied the accident itself and argued that if at all any amount is ordered by the Tribunal, that has to be paid only by the second respondent/Insurance Company. The second respondent denied the mode of accident and disowned the liability.

4. The second respondent/Insurance Company, in their counter statement, has stated that the accident occurred only due to the rash and negligent on the part of the appellant/claimant and also state that with the motive to get unlawful gain, she preferred a criminal complaint before police station. Hence, the Insurance Company has disowned the liability.

5. The Tribunal, upon analyzing the evidence and documents placed before it, has observed that the date of accident was on 18.03.2002, but the complaint was preferred by the claimant before the police, after delay of 13 days. Based on the evidence and documents, the Tribunal has rendered a finding, dismissing the claim petition observing that the claimant has not proved that the accident had occurred only due to the rash and negligent driving on the part of the respondent vehicle and also not proved that the injuries and disability sustained because of the said accident. Aggrieved against the said award, the appellant/claimant has preferred this appeal.

6. In the grounds of appeal, it has been stated that the appellant's husband has preferred the complaint before the police station on the date of accident itself, but no complaint has been taken on file by the police. It is also stated that the delay need not be considered by the Tribunal, since the claimant was under treatment at the relevant point of time. According to the claimant, since the treatment taken by her on the date of accident and also continuing her further treatment in the private hospital proves the fact that the claimant sustained injuries only due to the accident. Hence, the order of the Tribunal has to be set aside and the claimant has to be properly compensated.

7. Heard the learned counsel for the appellant. No

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representation on behalf of the respondents and perused the documents available on record.

8. The learned counsel for the appellant has argued that the accident had occurred, when the claimant was proceeding with her husband in his vehicle. At that time, the vehicle which came in the opposite direction, dashed against the claimant's vehicle thereby she sustained severe injuries. Immediately she was taken to the hospital by her husband and other person and the complaint was also preferred on the same day. It is the grievances of the appellant that the appellant's husband has filed a complaint before the police station on the date of accident itself, the said complaint has not been taken on file by the concerned police station. The delay has occurred only on the side of the police.

9. On a perusal of the records, it is seen that the claimant has not examined any evidence preferred on the date of accident. Further, it is also observed that in the wound certificate, there is no mention about the vehicle, which caused the accident. Further, in Ex.P2-Wound Certificate, it has been stated that the appellant's husband has taken her to the hospital, whereas the appellant in her deposition has stated that her hospital workers were taken her to the hospital. If really she sustained injuries because of the accident and admitted in the hospital, the hospital authorities will inform to the concerned police station there no proof has been file on that aspect, hence, it is clear that the injuries on the treatment claimed to have been sustained by the appellant are not occurred in the said accident. The tribunal has rightly observed the said aspect and concluded that the treatment taken by the appellant on the date of the accident were not for the injuries sustained due to the accident and dismissed the claim petition as not maintainable. This Court also finds no grounds for taking a different view, hence, confirms the order passed by the tribunal in M.C.O.P.No.13 of 2004, dated 12.08.2005.

10. In view of the above discussions, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Tiruvannamalai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Kumaradevan, Advocate, S.R.No.68913

CMA.No.160 of 2006

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