

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3380 OF 2011

P.Thangamani

... Appellant/Petitioner

Vs.

1. Shanmugavel,
Proprietor, Swarnambigai Motor Service,
Rathinasamy Pillai Thottam, Omalur Main Road,
Mamangam, Salem 636 302.
2. The Oriental Insurance Company Limited,
Divisional Office, Chamundi Complex,
4 Roads, Salem -7.
3. K.Nagi Reddy
4. The New India Assurance Company Limited,
Divisional Office, Premier Complex,
5 Road, Salem-16. ... Respondents/Respondents

(Respondents No.1 and 3 were set exparte in the trial court and hence notice to them is not necessary)

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the order of dismissal passed in M.C.O.P.No.183 of 2006 dated 03.09.2010 on the file of the II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr.R.Marudhachalamurthy
For 2nd Respondent : Mr.M.B.Raghavan Associates
For 4th Respondent : Mr.J.Chandran
Respondents 1 and 3 : Exparte

J U D G M E N T

The appellant in the instant appeal is the claimant in M.C.O.P.No.183 of 2006 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Salem.

2. The case of the appellant/claimant is that On 02.12.2005 at about 9.00 a.m. while she was traveling as a passenger in a bus bearing registration No. TN 30 J 9398, the driver of the bus, drove the bus in a rash and negligent manner and hit a lorry bearing registration No. AP 31 V 1389, as a result of which, the petitioner sustained multiple grievous injuries. According to the appellant/ claimant, she was immediately taken to Omalur Government Hospital, from where, she was referred to Government Hospital, Salem. It is further contended by the appellant/claimant that she incurred an expenditure of Rs.30,000/- towards treatment and that the accident was due to rash and negligent driving of the driver of the bus bearing registration No. TN 30 J 9398, belonging to the first respondent. Since the first respondent has insured the bus with the 2nd respondent, both the respondents are jointly and severally liable to pay compensation to the petitioner. The further contention of the appellant/ claimant is that the 3rd respondent is the owner of the lorry bearing Registration No.AP 31 V 1389 and the 4th respondent is the insurer of the lorry and the 3rd and 4th respondents are only formal parties in the claim petition.

3. The first and 3rd respondent remained absent and were set exparte in the trial court.

4. The 2nd and 4th respondent in their counter affidavit had denied all the allegations of the appellant/claimant.

5. After analysing the entire evidence on record, the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Salem, dismissed the claim petition filed by the appellant/claimant on the ground that the appellant/claimant did not produce any acceptable evidence to show that she sustained injuries on account of the accident and that the certified copy of the discharge summary (Ex.P2) is not sufficient in this regard.

6. Aggrieved over the said order of dismissal passed by the II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Salem, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Mr.R.Marudhachalamurthy, learned counsel appearing for the appellant would contend that the petitioner was actually travelling in the bus bearing registration No. TN 30 J 9398, at the time of the accident and that she had sustained injuries.

8. Per contra, Mr.M.B.Raghavan Associates and Mr.J.Chandran, learned counsels appearing for the 2nd and 4th respondent respectively would contend that, since neither a

copy of the Accident Register nor the wound certificate is produced by the appellant/claimant petitioner to prove that she sustained injuries, the order passed by the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Salem, dismissing the claim petition filed by the appellant/claimant is perfectly in order and does not warrant any interference by this court. They would further contend that Ex.P2, discharge summary does not show which hospital has issued the said discharge summary and therefore, they prayed for dismissal of the appeal.

9. No doubt, it is true that Ex.P2 is only a certified copy of discharge summary. The Sub Inspector of Police, Omalur Police Station has certified Ex.P2. The Ex.P2 further shows that the petitioner was admitted as an inpatient on 02.12.2005 and was discharged on 05.12.2005. The appellant/claimant had not examined the Doctor, who gave her treatment. However, the respondents did not dispute the fact that the appellant/claimant was a passenger in the bus bearing registration No. TN 30 J 9398. There was a head on collision between the bus bearing registration No. TN 30 J 9398 and the lorry bearing registration No. AP 31 V 1389. Therefore, the appellant/claimant would have definitely suffered shock and resultant trauma. Immediately after an accident and for several days afterwards, people usually experience being in shock. Anxiety is a natural reaction to a stressful incident such as a road accident. Apart from this, feelings of sadness or depression after a road accident are very common and often go hand in hand with the symptoms of anxiety. Hence, in the facts and circumstances of the case, the injuries sustained by the appellant/claimant is treated as simple in nature and awarding compensation of Rs.10,000/- to the appellant/claimant would meet the ends of justice.

10. In the result,

(i) The appeal is allowed in part.

(ii) A sum of Rs.10,000/- (Rupees ten thousand) is awarded to the appellant/claimant as compensation which shall be paid with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The 2nd respondent is directed to deposit the said amount along with interest to the credit of concerned bank account of the Motor Vehicle Accidents Claims Tribunal, II Additional Subordinate Court, Salem, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the 2nd respondent, the petitioner is entitled to withdraw the entire amount together with interest forthwith. No Costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mst

To

- 1 . The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.
- 2 . The Oriental Insurance Company Limited,
Divisional Office, Chamundi Complex,
4 Roads, Salem -7.

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.No.77096

+1cc to Mr.M.B.Raghavan, Advocate SR.No.77131

+1cc to Mr.J.Chandran, Advocate SR.No.76910

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VSN II (CO)
GMY (04/07/2019)

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