

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2574 of 2010

Parveen Begam

...Appellant/Complainant

Vs

1. S.Kadhar Basha

2. M/s.United India Assurance Co. Ltd,
Branch Office,
50-A, Pallivasal Street,
Perambalur.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1989, is preferred against the order and decretal order in M.C.O.P.No.519 of 2005 dated 04.08.2009 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondents : R1 - Exparte

Mr.N.Vijayaraghavan (for R2)

* * * * *

J U D G M E N T

The instant appeal has been filed by the claimant challenging the award dated 04.08.2009, passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur in M.C.O.P.No.519 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The case of the appellant is that she sustained injuries while travelling in an auto on 05.12.2004, bearing Registration No.TN 46 B 7974, due to the rash and negligent driving by its driver. According to the Appellant the said auto is insured with the second respondent Insurance Company. The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.519 of 2005, seeking an compensation of Rs.3,00,000/- for the injuries sustained by her as a result of the accident.

(ii) The Motor Accident Claims Tribunal rejected the claim of the Appellant by its Award dated 04.08.2009, passed in M.C.O.P.No.519 of 2005.

3. Aggrieved by the dismissal of the claim petition in M.C.O.P.No.519 of 2005, the claimant has preferred the instant appeal.

4. Heard Mr.S.Kamadevan, learned counsel for the Appellant and Ms.Srividhya, learned counsel for the second respondent.

5. According to the learned counsel for the Appellant, the Tribunal has erroneously dismissed the claim petition on the ground that the accident has not been proved with sufficient materials and there was also delay in filing of the FIR. According to the learned counsel for the Appellant, the delay in filing FIR cannot be the basis to reject the claim when there are other materials to prove the accident and the injuries sustained by the Appellant.

6. Per contra, the learned counsel for the second respondent Insurance Company would submit that there is a categorical finding given by the Tribunal under the impugned Award that the Appellant has not been able to establish that the accident happened on 05.12.2004 and the cause of the accident was the Auto bearing Registration No. TN 46 B 7974 insured with the second respondent. Having failed to prove the accident, the Tribunal has rightly rejected the claim of the Appellant.

7. This Court has examined the impugned Award. It is a well considered and reasoned Award. The Appellant has examined three witnesses on her side and the respondents have also examined three witnesses on their side. The Appellant has filed 10 documents marked as Exs.P1 to P10. The second respondent has also filed an investigation report which is marked as Ex.R1.

8. Considering the above mentioned documents as well as the evidence of respective witnesses, the Tribunal has come to the categorical finding that the Appellant has not been able to prove that an accident took place on 05.12.2004, caused by an Auto bearing Registration No. TN 46 B 7974 insured with the second respondent. Further, the Appellant has also belatedly lodged an FIR in respect to the accident. The investigation report produced by the second respondent which is marked as Ex.R1 also reveals that no accident involving the vehicle insured with the second respondent took place on 05.12.2004. The owner of the Auto was also examined as a witness and he has also deposed before the Tribunal that P.W.3 who according to the Appellant was a driver of the vehicle is not his driver.

Only after considering the oral and documentary evidence, the Tribunal has passed the impugned Award rejecting the claim of the Appellant. This Court is of the considering view that there is no infirmity in the Award passed by the Tribunal.

9.In the result, there is no merit in the instant appeal. Accordingly the appeal is dismissed. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

To

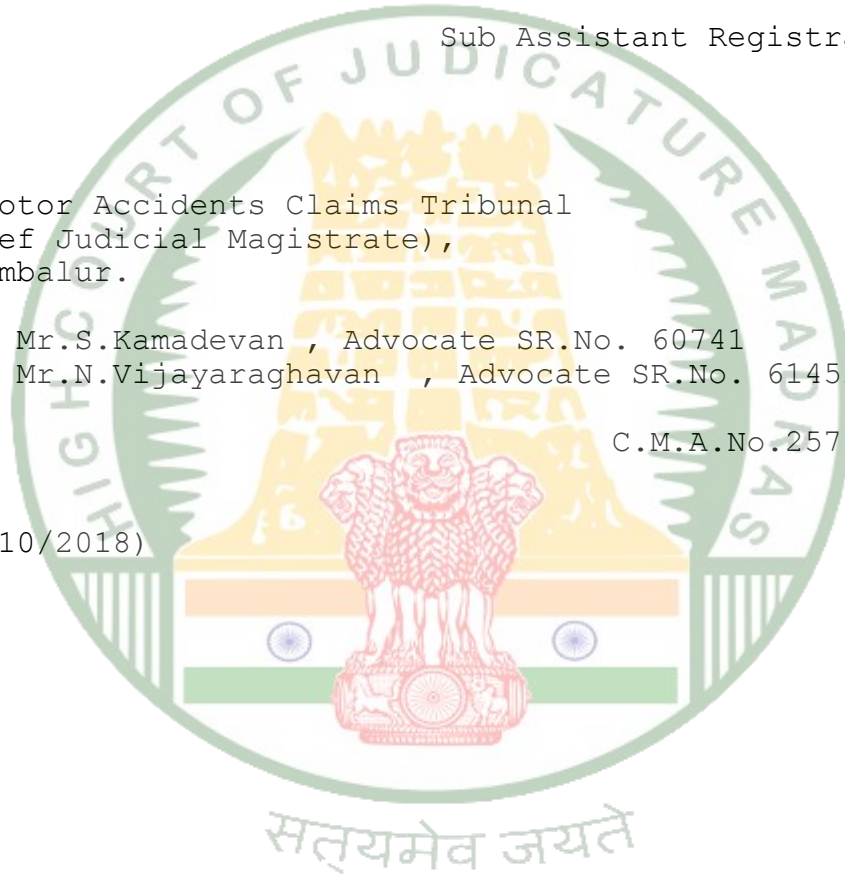
1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate),
Perambalur.

+1cc to Mr.S.Kamadevan , Advocate SR.No. 60741

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 61452

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ASK(16/10/2018)



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