

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.988 of 2007

Minor Saranya,
rep.by her Natural Guardian and father
Srinivasan

... Appellant/Petitioner

Versus

1. Arun Kumar

2. National Insurance Co.Ltd.,
Divisional Office at
Officer's Line, Opposite to
Lakshmi Theater, Vellore.

.... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30/12/2005 made in M.C.O.P.No.100 of 2001 before the Motor Accident Claims Tribunal, Vellore (Principal District Court, Vellore).

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.J.Chandran for R2

JUDGMENT

This appeal has been preferred against the Judgment and Decree passed in M.C.O.P.No.100 of 2001 dated 30.12.2005 before the Motor Accident Claims Tribunal, Vellore.

2. The brief facts of the claim application is that on 03.09.2000, the injured claimant was proceeding on the left side of the road, at that time, a Van bearing Regn.No.TN-23-E-1364 came in a rash and negligent manner and hit against the injured and caused severe injuries. The injured was taken to the C.M.C. Hospital, Vellore and then taken for treatment to Chennai and

inspite of the treatment given, the health condition of the injured is not restored. The contention of the appellant is that the accident had occurred due to the rash and negligent driving of the driver of the van. The claimant filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation.

3. Based on the evidence and the documents filed by both the claimant and the respondents, the Tribunal has given the finding that the accident did not occur by motor vehicle. By assessing and verifying the documents and evidence before it, the Tribunal gave a finding that the injured claimant is not entitled for any relief and the petition filed for compensation was dismissed.

4. Aggrieved against the Judgment of the Tribunal, the appellant/injured has filed the appeal on the ground that the Tribunal has not properly appreciated the evidence and also the fact that the independent person namely Mr.Parthiban who had witnessed the accident and he is the person who preferred the complaint before the Police on 04.09.2000. Further, the learned counsel for the appellant/claimant argued that the entry made in the discharge summary on 04.09.2000 to the effect that " Miss Saranya presented with history of alleged fall from the height of 20 feet on 03/09/2000 at 1p.m" is a wrong entry and that it could be demonstrated as set out here under that in the discharge summary dated 14.09.2000 in Ex.P.2 there is no more wrong statement ie., in the line below column chest X-ray it is stated that the " scan done on 03/07/2000 showed diffuse brain swelling with effacement..." When the accident itself took place on 03.09.2000, how the X-ray could have been taken on 03.07.2000 and it is patent error committed by the hospital authorities for which the appellant/claimant could not be penalized and the argument advanced by the learned counsel for the appellant is that the accident register was wrongly prepared and most probably the accident register of one Umadevi might have been entered in the case of appellant/injured and amended discharge summary dated 02/03/2006 was also issued by the Office of the Medical Superintendent and the appellant/claimant came to know about the said fact only after the delivery of Judgment. All these facts were not made known to the appellant at the time of trial. Hence wrong entries made in the Discharge Summary caused prejudice in disposing of the claim application and hence it has to be set aside.

5. In the Counter statement filed by the second respondent, it is stated that the compensation claimed is excessive and the claimant has to prove the negligent driving of the driver of the van.

6. The second respondent/insurance company contended that the document filed by the petitioner, the wound certificate itself says that " Nine year old Miss C.Saranya presented with a history of alleged fall from height of 20 feet on 03/09/2000 at 1 p.m'". Hence the injuries sustained by the minor Saranya are not due to the accident.

7. The contention of the claimant is that the injury caused is only due to the motor vehicle accident and only the medical authorities have made the wrong entries, whereas the respondent has marked the documents viz investigation report and C.M.C.Hospital OP Record.

" 9 year old Miss Saranya presented with history alleged fall from a height of 20 feet on 03/09/2000 at 1.p.m. She was unconscious since the accident" .

Ex.P.2 says that the injured person fell from the height of 20 feet and sustained injury of fracture in the right tibia and there is also swelling of brain which was noted in the C.T.Scan. In Ex.P.2, the date of admission is noted as 03.09.2000 and the date of discharge is mentioned as 14.09.2000 at 1p.m. The complaint was given by one Mr.Parthiban on 04.09.2000 at 8am. The said complainant/Mr.Parthiban has stated that he is working as a bus driver . On 03.09.2000, he was returning to Krishnagiri in Barathi bus bearing Regn.No.TN-21-C-1166 and when the bus was stopped for the passengers to drink water near Vettuvanam, the injured claimant Saranya proceeding from north to south crossed the main road , at that time, a van bearing Regn.No.TN-23-E-1364 driven by its driver in a rash and negligent manner hit against the Saranya and caused severe injuries on her and immediately the complainant along with other passengers had taken the injured to Vellore CMC hospital and the compliant could not be given on the same date and preferred on the next day ie., 04.09.2000.

8. Ex.P.5 which is the Wound Certificate which says that certain injuries said to have caused on 03.09.2000 and the time as 5.50p.m was also strike down and in words, it has been written as Road Traffic Accident. There is some alteration not only in respect of the date of accident but also in respect of time and further it is stated that the injured was first seen by the undersigned by 5.15p.m on 15.09.2000 and the examination was conducted at 5.15p.m and the nature of injuries are noted as two injuries. Ex.P.6 Discharge Summary which was filed by the claimant reveals that the date of admission was 15.09.2000 and date of discharge on 13.11.2000. Hence, as per Ex.P.5 first, the injured was seen on 05.09.2000 at 5.50p.m. Hence the correction was made in one place as 15.09.2000 and strike out and noted the time instead of 5.50p.m. The alteration was made as 1p.m and the

other document Ex.P.4 the receipt says that date 01.12.2000 and Ex.P.6 Discharge Summary says the date of admission as 15.09.2000 and discharged on 30.11.2000. Hence, there is much contradiction with regard to the date of accident mentioned in the First Information Report by the complainant and the medical documents Ex.P.5 and Ex.P.6 which say that the date of admission as 15.09.2000. There is no cause of injury stated in the Discharge Summary. Hence there is much doubt created because of the date of accident and date of admission. The appellant has not examined the medical authorities before the Tribunal who have done the wrong entries. If really, some authorities have made such wrong entries, the claimant would have taken appropriate steps immediately after knowing the fact.

9. On the other hand, on the side of respondent, R.W.1 was examined who deposed before the Tribunal that the accident occurred not because of the hit by the vehicle and complaint was preferred before the CBCID. It is also the evidence of R.W.1 who deposed before the Court on 03.09.2000. The Doctor examined one Saranya and Ex.B.4 is the OP record Photostat Copy of C.M.C Hospital in which it is stated that some person accompanied with Child Saranya told the Doctor, " She had a fall from a height of 20 feet at Kalavai at 1.00 p.m on 03.09.2000". Hence the evidence of R.W.1 who examined the injured immediately as recorded the fact that injured was accompanied by person who have furnished the information that the injured had fall from the height of 20 ft. Hence, the corrections made in the Accident Register with regard to the date as 15.09.2000. Nothing is elicited by the petitioner to prove the fact that the entries were wrongly written down by the hospital authorities. In the absence of any other document and any evidence produced before the Tribunal that the injured sustained injury only due to the motor vehicle accident on 03.09.2000. The claim of the appellant cannot be considered. The Tribunal after verifying the documents and also examining the witnesses has properly found that the injury of the claimant was not due to hit by the motor vehicle. The finding of the Tribunal based on the facts and documents does not require any interference. Further, there are no merits in the appeal.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vv

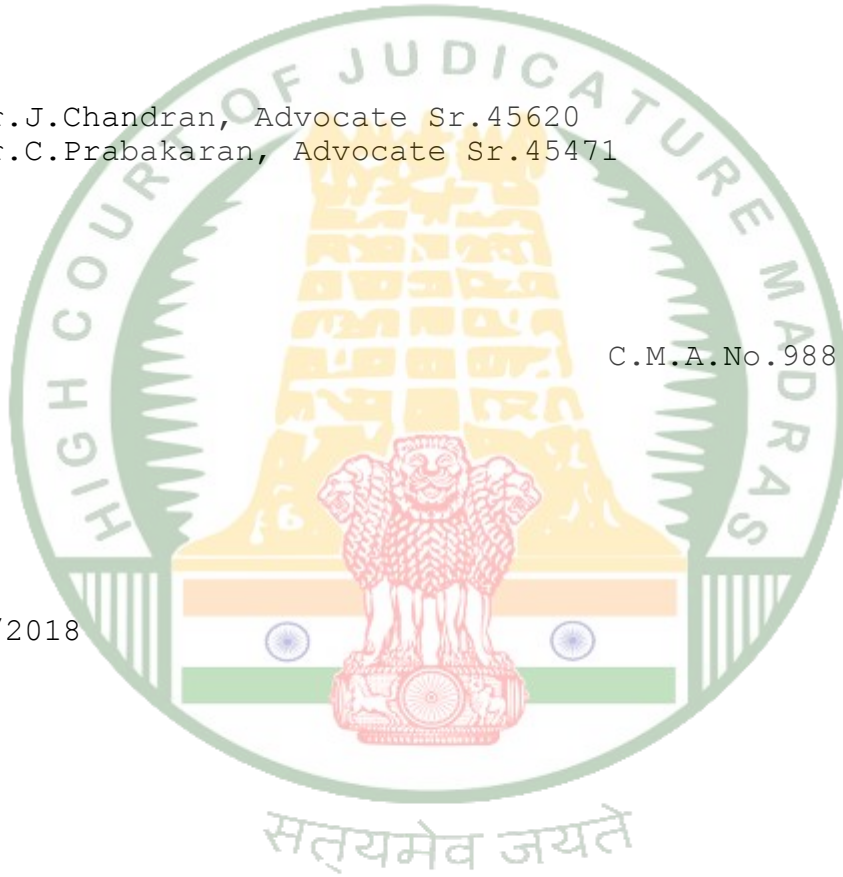
To

1. The Motor Accident Claims Tribunal,
Vellore(Principal District Court, Vellore)
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate Sr.45620
+1cc to Mr.C.Prabakaran, Advocate Sr.45471

C.M.A.No.988 of 2007

pvs[col]
srg 22/10/2018



WEB COPY