

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2987 of 2008

Ambiga @ Ponnammal

(Mentally infirm)

represented by her guardian

and next friend Narayanan

... Appellant/Petitioner

Vs.

1.Saravanan

2.The Divisional Manager,

M/s.New India Assurance Company Limited,

Jawaharlal Nehru Street,

Pondicherry.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment dated 24.04.2006 in M.C.O.P.No.1130 of 2004 on the file of Motor Accidents Claims Tribunal cum III Additional District Judge, Pondicherry.

For Appellant : Mr.R.Syed Mustafa

For Respondent 2: Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the dismissal of the claim petition filed by the mentally infirm appellant through her guardian and next friend Narayanan.

2.According to the appellant/claimant, on 20.04.2004 at about 19.30 hours, she was proceeding as a pillion rider in a bicycle ridden by one Ramasamy. When they were in Kurunchi Nagar Main Road, near Ponniamman Koil, Pondicherry, a load carrier bearing Registration No.TN-49/A-6237 belonging to the 1st respondent and insured with the second respondent insurance company came in a rash and negligent manner and dashed against the cycle. Due to the said impact, the appellant was thrown away, resulting in grievous injuries caused to her. Immediately she was taken to Government General hospital, Pondicherry for

treatment. Thereafter, she took treatment at private clinic. Stating so, she filed a claim petition claiming a compensation of Rs.3,00,000/-. On a consideration of the evidence and materials adduced by the parties, the Tribunal has dismissed the claim petition. Aggrieved over the same, the appellant/claimant has preferred this appeal.

3. Heard the learned counsel for the appellant, who submitted that without considering the materials and evidence adduced by the appellant/claimant in a proper perspective, the Tribunal has erred in dismissing the claim petition. Hence, the learned counsel sought to allow the claim petition and grant compensation to the appellant for the injuries sustained by her in the motor vehicle accident.

4. On the other hand, the learned counsel for the 2nd respondent insurance company submitted that the Tribunal, after analysing the oral and documentary evidence adduced by the parties, has rightly rejected the claim petition, which warrants no interference at the hands of this Court.

5. Heard both sides and perused the records.

6. P.W.1/father and guardian of the mentally infirm appellant has deposed in his evidence that on 20.04.2004 at about 7.30 a.m., the appellant was travelling as pillion rider in the bicycle driven by his son-in-law Ramasamy and when the cycle was going near Ponnamman Koil on Kurinchi Nagar Main Road, the van which was coming in the opposite direction driven by its driver in a rash and negligent manner, dashed against the cycle; and in the accident, the appellant sustained injury in the right hand exposing bone and his son-in-law sustained some minor injuries; and he took the appellant to G.H., Pondicherry, where she was given treatment as in-patient for ten days and thereafter treated by Dr. Surendar of Lawspet for about seven months. Denying the claim made by the appellant/claimant, the second respondent insurance company filed a detailed counter statement. According to them, the appellant received injuries not in the accident involving the vehicle insured with them and she made a false claim.

7. The Tribunal after taking note of the rival contentions and appreciation of the evidence and materials adduced by the parties, has raised suspicion about the genuineness of the claim made by the appellant/claimant. According to the Tribunal, when a person was thrown away from the cycle due to the hit by a vehicle, there is a possibility of receiving injuries all over the body, whereas, in the Accident Register, there was a reference of one injury i.e., delgloving injury in right arm; the rider of the cycle did not receive any injury in the alleged

accident; it was the evidence of P.W.1 that the van, which was coming from the opposite direction, dashed against the cycle and as such, the damage would be on the front side of the cycle, but as per the evidence, the rear side wheel of the cycle was damaged; the vehicle involved in the accident was detained by the villagers, but P.W.1 has lodged the complaint, after 10 days from the date of accident; the accident happened at 7.30 p.m. and there was no evidence with regard to the availability of electric light in the accident spot and in such circumstances, P.W.1 would not have seen the accident at 15 feet away from the accident spot. If really he noted down the Registration Number of the vehicle involved in the accident immediately after the accident, he would have told the same to the doctor, who recorded the accident. Thus, the Tribunal has come to the conclusion that the appellant has not received injury in the accident and the petition has been set up in order to claim compensation and no accident had happened as alleged by P.W.1 and ultimately, dismissed the claim petition, which this Court is not inclined to interfere, as the same is based on the evidence and materials adduced by the parties and is perfectly right.

8. Finding no merit, this appeal fails and is accordingly, dismissed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, III Additional District Judge (i/c),
Pondicherry.

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

+1 CC to Mr. M.B. Gopalan, Advocate sr 71570.

C.M.A.No.2987 of 2008

MR (CO)
SP (08/06/2020)