

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2019

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.1747 of 2015

R.Maniyammal

..Appellant/Claimant

Versus

1.Senthil Kumar

2.The Divisional Manager,

The New India Assurance Company Limited,

Thiruvannamalai Town,

Thiruvannamalai District.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2010 made in M.C.O.P.No.331 of 2007, on the file of Motor Accidents Claims Tribunal, Fast Track Court, Additional District Court, Thirupathur.

For Appellant : Mr.S.V.Karthikeyan

For R1 : Unclaimed

For R2 : Mr.K.Thirunavukarasu

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 08.11.2010 made in M.C.O.P.No.331 of 2007, on the file of Motor Accident Claims Tribunal, Fast Track Court, Additional District Court, Thirupathur.

2. The brief facts of the case leading to the claim application are as follows:

On 04.12.2005 at about 03.30 p.m., when the petitioner was travelling in the auto bearing Registration No.TN 25 C 6249 towards Thirupathur from Natrampalli, with very much care and caution and at that time one minor auto bearing Registration No.TN 23 R 6447 driven by its driver, which came in the opposite direction with great speed and without care and caution and without blowing horn, dashed against the auto and the petitioner sustained grievous injuries on her knee, wrist and all over the body. Hence, for the injuries sustained by her and for the disability, loss of income, pain and sufferings, the petitioner claimed a sum of Rs.3,00,000/- as compensation.

3.The first respondent in the counter statement has contended that the vehicle alleged did not involve in the accident. The second respondent in the counter statement contented that the minidor auto bearing Registration No.TN 23 R 6447 was not insured with this respondent on the date of accident i.e. on 04.12.2005. Only after the accident, it came to be insured with this respondent i.e. from 10.12.2005 to 09.12.2006 and it was a new policy. There was no previous policy taken from the second respondent/Insurance Company. Hence, the second respondent/New India Assurance Company stated that they are not liable to pay the compensation. The second respondent/Insurance Company also denied that the sum claimed under various heads is exaggerated and excessive one in the absence of any strict proof.

4.The Tribunal after analyzing the evidence and documents placed before it, has given a finding that by verifying the documents Ex.R1 and also the evidence of R.W.2, that while comparing the date of accident as per the averments made i.e. on 04.12.2005 and also the evidence as per Ex.P2/accident register, it is seen that the claimant has stated before the Doctor that on 03.12.2005 at about 03.30 p.m., she was travelling in an auto, but, admitted in the hospital for treatment only on 08.12.2005. Regarding the treatment taken at the Government hospital and also at the private hospital, the claimant has not filed any document and hence, the Tribunal has made a very elaborate discussion and given its finding by raising a doubt whether the injury sustained by the claimant was only due to the said accident as such and dismissed the claim petition.

5.Aggrieved against the said order of dismissal, the claimant has preferred this appeal. In the appeal, the appellant has contended that inspite of the evidence and documents placed before the Tribunal, the Tribunal dismissed the claim application. When the Tribunal has referred that the first respondent vehicle was found running on the road on the day of accident, it ought to have decided the further issues regarding the role of the vehicles and the negligence of the parties to the accident. The Tribunal ought to have seen that the vehicle of the first respondent is noted in the First Information Report and was sent for inspection to the Motor Vehicle Inspector, in pursuant to the said accident. When the petitioner/victim filed medical certificates and receipts as proof of evidence that she has sustained grievous injuries due to the accident, the Tribunal ought not to have dismissed the claim application. Further, the Tribunal has not considered the evidence given by the claimant that she became unconscious after the accident and she was also taken up to the hospital by her relatives and the delay in preferring the F.I.R has occurred due to the said

reason. The claimant is an uneducated women and she is not expected to give the correct proof of vehicle to the doctor. While, she has been admitted in the hospital, there is no justification in dismissing the claim application. The other grievance raised by the appellant is that when she sustained 45% disability and the same also proved by the documents, the Tribunal has not considered said factor of the disability and the injury, while deciding the case. The other grievance raised by the appellant is that the Tribunal ought to have fixed the liability on the first respondent and awarded compensation made by the claimant. Hence, appellant sought for setting aside the order and decree passed by the Motor Accidents Claims Tribunal, Fast Track Court, Additional District Court, Thirupathur.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. The appellant has denied that the accident while she was travelling in the auto bearing Registration No.TN.25.C.6249 on 04.12.2005 when the minidor bearing Registration No.TN.23.R.6447 owned by the second respondent and insured with the second respondent came in the opposite direction and dashed against the auto in which the appellant was travelling and the appellant sustained grievous injuries and taken to a private hospital for treatment and after discharge from the private hospital, the appellant went to private hospital next day and where she was referred to Government hospital and the auto rickshaw report has been registered. The Tribunal has also not considered the version of the respondents that the auto bearing Registration No.TN.23.R.6447 was stalled in the workshop is not in the usage. The appellant contended that the claim of the appellant was dismissed due to the sole ground that there is a delay in lodging the complaint and wrong mentioning of the number of vehicle in the accident register. The petitioner vehemently argued that the appellant sustained grievous injuries and was treated as inpatient and she also sustained disability and spent huge amount for recovery. Hence, the evidence of P.W.1 will prove the entire facts. Hence, the appellant contended that the claim application has to be considered and the judgment of the Tribunal has to be set aside.

8. On perusal of records, it is observed that the date of accident occurred on 04.12.2005 at about 3.30 p.m. The complaint was given on 09.12.2005 and the claimant was admitted in the hospital on 08.12.2005 for treatment for the said delay in getting treatment immediately after the accident. The appellant/claimant has given the reason and immediately after accident she was admitted in the private hospital for quick treatment and then she went to the Government hospital for treatment. But, it is observed that there is no relevant

document for the claimant taking treatment in a private hospital. In F.I.R the claimant has stated that immediately after the accident she got fainted and her sister's husband admitted her in the hospital on the next day, she was also discharged. When she suffered from severe pain again she admitted in the Thirupathur Government Hospital on 08.12.2005 and the complaint was given on 09.12.2005. It is also observed from the accident register the appellant/claimant has given the date of accident invariably. The registration number of the vehicle involved in the accident was also given by her wrongly and there is a correction of registration number in the accident register.

9.The other fact dealt by the Tribunal is the evidence of R.W.1 who claims to be owner of the vehicle bearing Registration No.TN.23.R.6447. The first respondent denied that on the date of accident the vehicle belongs to the first respondent bearing Registration No.TN.23.R.6447 was not in the usage the said vehicle was given in the workshop for repair on 17.11.2005 and further the said vehicle was taken delivery only on 07.12.2005. Hence, from 17.11.2005 to 07.12.2005, the said vehicle was not in use. The version of first respondent was not considered by the Tribunal regarding the involvement of the vehicle which the first respondent deposed that the said vehicle was not in use during the said period was not considered by the Tribunal.

10.Further, it is observed that there is a correction made in the date of accident as 03.12.2005 to 04.12.2005 the case was registered only on 09.12.2005. Hence, the respondents also denied the accident as a false one.

11.Regarding the above said issue, the claimant was examined as P.W.1 and who has deposed before the Tribunal is that she has deposed in the chief examination that the accident occurred on 04.12.2005. But, before the doctor she has deposed that the accident occurred on 03.12.2005 at about 3.30 p.m. while she was travelling in the auto rickshaw, the minidor auto dashed against the auto the reason stated by the petitioner for the delay in preferring the complaint on 09.12.2005 was not fair and decreetal one. It is also observed that there is a correction in the registration number during the cross examination also the appellant/claimant admitted the fact that with regard to registration number, there is a correction in the said document. Hence, the cloud arises whether on the said date and time, the accident had occurred and whether the first respondent vehicle is involved in the said accident and the appellant/claimant has not proved the fact before the Tribunal. Further, on perusal of the records it is observed that the appellant/claimant has not produced any documents regarding the treatment taken by her

immediately in a private hospital and went into Government Hospital for further treatment. Hence, while analyzing R.W.1/owner of the vehicle who totally denied the involvement of the vehicle by stating that it was not plying in the road on the said accident and regarding the change of registration number given by the claimant in the accident register and also absence of clear reason for preferring the complaint belatedly or all not proved by the appellant/claimant. Hence, the appellant/claimant has not proved the fact that only due to the rash and negligence driving on the part of the driver of the vehicle bearing Registration No. TN.23.R.6447 and the claimant did not sustain injury due to the said accident is claimed by her in the claim application and also spoken before the Tribunal.

12.It appears that the petitioner has not furnished any clear and perfect details for claiming compensation to prove that the incident had occurred due to rash and negligent driving on the part of the driver of the first respondent. In view of the above discrepancies with regard to the date of accident and the date of admission which were not clarified by the appellant and also the correction made in the registration number are all creates head out, this Court is of the opinion that the finding of the Tribunal that the claimant is not entitled for any compensation since the claimant has failed to prove the essential facts regarding the involvement of the vehicle and the date of accident and other related facts is proper and reasonable. Hence, the order of the Tribunal in dismissing the claim application filed by the appellant herein does not require any interference and the same is confirmed.

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

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

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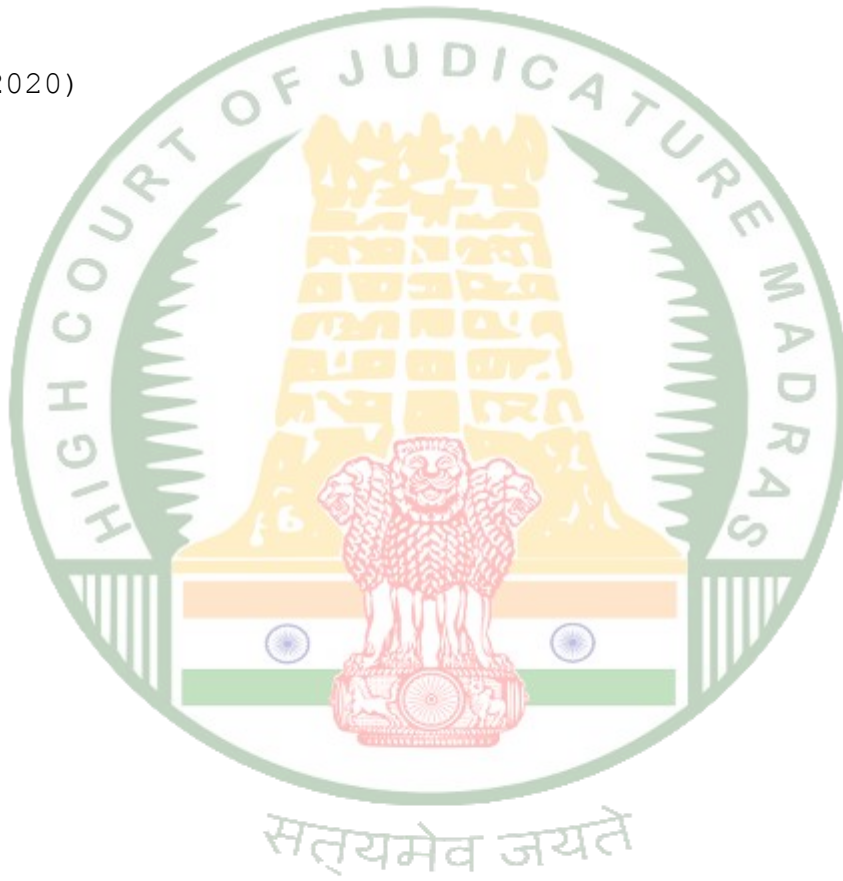
1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Thirupathur.

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

CMA.No.1747 of 2015

RSI (CO)
SP(02/03/2020)



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