

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.176 of 2015

and

M.P.No.1 of 2015

The United India Insurance Co. Ltd.,
5B/11, State Bank Madi
Salem Road
Rasipuram-637 408. Appellant/2nd Respondent

Vs.

1.Priyadharshini1st Respondent/Petitioner

2.M/s.Krishthu Jayaanthi College
K.Narayanapura, Kothanur
Bangalore-560 077. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2014 made in M.C.O.P.No.69 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellant : Mrs.R.Sree vidhya

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 30.04.2014 made in M.C.O.P.No.69 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Rasipuram.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.69 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Rasipuram. The 1st respondent filed the said

claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 21.12.2012. According to the 1st respondent, while she was crossing the road near Selvam College in Salem-Namakkal main road, a car belonging to the 2nd respondent driven by its driver in a rash and negligent manner dashed against the 1st respondent and caused the accident. In the accident, she sustained injuries and therefore, she filed the above claim petition.

3.The appellant/Insurance Company filed counter statement and contended that the accident did not occur due to rash and negligent driving by the driver of the car belonging to the 2nd respondent. On the other hand, the 1st respondent suddenly crossed the road unmindful of other vehicles coming on the road. The Police after investigating the complaint, has closed the complaint as 'mistake of fact'. In any event, the 1st respondent has also contributed negligence to the accident.

4.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Sampathkumar/doctor as P.W.2 and marked eight documents as Exs.P1 to P8. The appellant examined Deputy Manager of its office as R.W.1 and marked two documents; final report as Ex.R1 and rough sketch as Ex.R2.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent, the appellant has failed to prove that the 1st respondent was responsible for the accident and contributed negligence to the accident and directed the appellant/Insurance Company being insurer of the said car to pay a sum of Rs.1,46,615/- as compensation to the 1st respondent. Against the said award dated 30.04.2014 made in M.C.O.P.No.69 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that except the 1st respondent, no other student was injured, which shows that the 1st respondent suddenly crossed the road, while other students were waiting after getting down from the bus. The Police official, who investigated the complaint, which was lodged against the driver of the car, enquired number of persons and closed the complaint as 'mistake of fact'. The Police official has no reason to support the driver of the car and has no vengeance against the 1st respondent. The Tribunal has failed to take into account the final report of the Police, who closed the complaint as 'mistake of fact'. The Tribunal erred in not accepting the final report on the ground that no notice was given to the defacto

complainant, who is third party. Only when complainant is victim, notice is necessary and prayed for allowing this appeal.

7. Though notice was served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

9. It is the case of the 1st respondent that after she crossed the road, driver of the car belonging to the 2nd respondent drove the same in a rash and negligent manner, dashed against the 1st respondent and caused the accident. P.W.1, the 1st respondent spoke about the manner in which the accident has occurred and marked F.I.R., which was registered against the driver of the car. On the other hand, it is the case of the appellant that the accident occurred due to negligence on the part of the 1st respondent alone and complaint given against the driver of the car was closed as 'mistake of fact', which was erroneously rejected by the Tribunal.

10. From the above materials, it is seen that the appellant has not examined the Sub-Inspector of Police, who closed the complaint as 'mistake of fact'. The appellant has not produced any materials to show that the final report was filed in the Court of concerned Magistrate and any order was passed by the said Magistrate. Admittedly, no notice was issued to the defacto complainant. The Tribunal considering the above failure on the part of the appellant to prove that the final report was accepted by the concerned Magistrate, has rejected the said report. Further, the driver of the car, who is the competent person to speak about the manner in which accident occurred, was not examined. R.W.1/Deputy Manager of the appellant/Insurance Company is not an eye-witness to the accident. The Tribunal has appreciated all the above materials in proper perspective and held that the accident occurred solely due to rash and negligent driving by the driver of the car belonging to the 2nd respondent. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

11. As far as quantum of compensation is concerned, the Tribunal after considering both oral and documentary evidence, awarded compensation to the 1st respondent, which is not excessive and the same does not warrant any interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,46,615/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any,

within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

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To

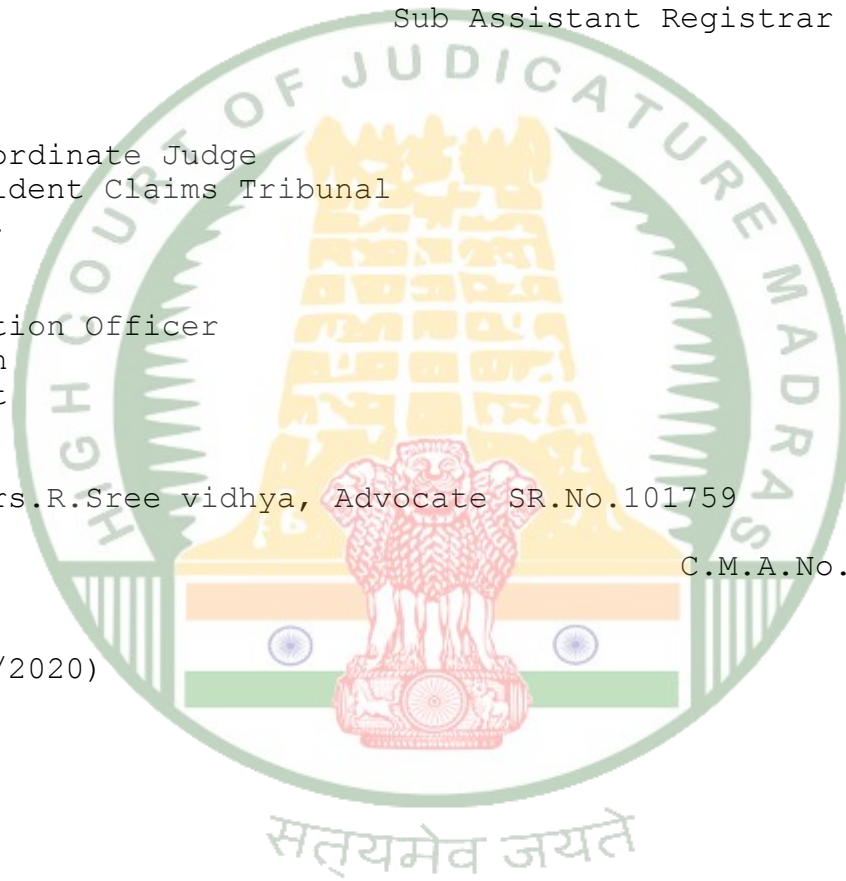
1.The Subordinate Judge
Motor Accident Claims Tribunal
Rasipuram.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mrs.R.Sree vidhya, Advocate SR.No.101759

C.M.A.No.176 of 2015

SJ(CO)
GMY(18/08/2020)



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