

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.484 of 2015
and M.P.No.1 of 2015

The Branch Manager,
M/s. United India Insurance Co. Ltd.,
The Branch office at,
123-A, No.2 Road,
Mayiladuthurai Taluk. ..Appellant/2nd Respondent

Vs.

1.Arokiamary ..1st Respondent/Petitioner
2.S.K.Moorthy ..2nd Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP. No.78 of 2013, dated 28-02-2014 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

For Appellant : Mr.M.B.Gopalan
For R1 : Mr.S.Sounthar

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 28.02.2014 and made in M.C.O.P.No.78 of 2013 , on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

2. The brief facts relating to the claim application are as follows:-

The accident occurred on 06.01.2013 at about 8.45 a.m, when the first respondent/claimant was standing in the bus stop at Pukadai Street and at that time, MRS mini bus bearing Registration No.TN 51 S 5989 belonging to the second respondent herein, which was stopped in the bus stop, and While, the first respondent/claimant was getting into the bus, the driver of bus without indication, had run the bus in a rash and negligent manner, as a result of which, the first respondent/claimant had fallen from the bus and sustained grievous injuries on her right shoulder and she was admitted in the Sri Krishna Hospital, Mayiladuthurai. The first respondent/claimant was given

treatment for fracture as an in-patient and surgery was also done. Since the first respondent/claimant was aged about 60, the surgery was not successful. Due to rash and negligent driving on the part of the driver of the second respondent's bus, the first respondent/claimant became permanently disabled and lost her earnings and also spent more money for medical expenses. The police has registered a criminal case against the driver of the bus. Hence, the first respondent/claimant filed a claim petition in M.C.O.P.No.78 of 2013 claiming a sum of Rs.3,00,000/- as compensation for the injury, disability and other loss sustained by her.

3. The learned counsel appearing for the appellant/Insurance company denied that the accident had occurred only due to the careless and negligent act of the first respondent/claimant. The first respondent/claimant is bound to prove that she sustained grievous injuries on 06.01.2013 due the involvement of second respondent's vehicle by reliable documents. The first respondent/claimant has given a wrong information and hence a case has been registered against the driver of the bus and therefore, the appellant/Insurance company also denied the compensation claim filed by the first respondent/claimant on various heads and also stated that it is excessive one without any proof.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to the rash and negligent act on the part of the driver of the bus. The Tribunal has also observed that the accident occurred on 06.01.2013 and based on the discharge summary and also the evidence of the Doctor, who issued a certificate of disability, the Tribunal passed an award for a sum of Rs.1,32,663/- under various heads.

5. The main grievance of the first respondent/claimant is the delay in lodging the complaint after lapse of 11 days. The Tribunal has awarded a sum of Rs.64,000/- towards disability at 32%, Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards Nourishment, Rs.5,000/- towards Transportation, Rs.20,000/- towards Future Surgery and Rs.28,663/- towards Medical Expenses. The Tribunal awarded the total compensation at Rs.1,32,663. Aggrieved by the said award, the appellant/Insurance Company has preferred this appeal.

6. In the grounds of the appeal, the appellant / Insurance Company stated that the entire liability is fixed on the part of the second respondent and the Tribunal failed to appreciate that there under serious discrepancies in the F.I.R registered, which

is not genuine, but it is created for the purpose of enabling a false claim. The Tribunal failed to appreciate that the date in the hospital intimation had been glaringly corrected clearly to support the false claim and such clear evidence, it taken together, disproves the occurrence alleged or the involvement of the first respondent. The Tribunal stated that the vehicle was falsely implicated by a collusive police complaint.

7. Heard the learned counsel appearing for the appellant / Insurance Company as well as the learned counsel appearing for the first respondent and perused the materials available on record.

8. As per the evidence, FIR was registered with a delay of 11 days. It is observed that the claimant was admitted in the hospital and the discharge summary and accident register reveals the fact that on that date, the first respondent/claimant sustained injuries.

9. It is seen from the award that the Tribunal has rightly observed the evidence of P.W.2 doctor, who assessed the disability at 32% and awarded compensation for disability at Rs.64,000/-. In view of the injuries sustained by the claimant, the sum awarded under other heads viz., 1. Pain and sufferings 2. Extra Nourishment, 3. Transport Expenses 4. Future Medical Expenses for surgery, are very much proper and reasonable and the same does not require any modification. Accordingly, the findings of the Tribunal in fixing the liability on the Insurance company and directing the owner of the vehicle and the Insurance company to pay the compensation jointly or severally by holding that the accident had occurred only due to rash and negligence on the part of the driver of the 2nd respondent's vehicle and also the fact that the driver of the vehicle was holding the valid driving license at the time of the accident and the said vehicle was insured with 2nd respondent is proper and does not require any interference.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,32,663/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

11. Both the appellant-Insurance Company and 2nd respondent herein are directed to deposit the amount as awarded by the tribunal along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date

of receipt of a copy of this judgment to the credit of M.C.O.P.No.78 of 2013. On such deposit, the first respondent/claimant is permitted to withdraw the same, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal.

Sd/-

Assistant Registrar(Arbitration)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+1 cc to M/s.M.B.Gopalan, Advocate Sr.No. 56088

+1 cc to M/s.S.Sounthar, Advocate Sr.No. 55783

AKM/13.02.2020/4P-5C /

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