



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2019

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

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C.R.P (MD)No.2297 of 2010

and

M.P (MD)No.1 of 2010

National Insurance Co. Ltd.,
represented through its
Divisional Manager,
2A, Thirumakkulam,
North Street,
Tallakulam,
Madurai - 2.

... Petitioner/ 2nd Respondent

Vs.

1.Tamil Selvi

... 1st Respondent/ Petitioner

2.S.Sheik Mohideen

... 2nd Respondent/ 1st Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the order made in M.C.O.P.No.766 of 2004 dated 01.09.2009 by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

For Petitioner : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

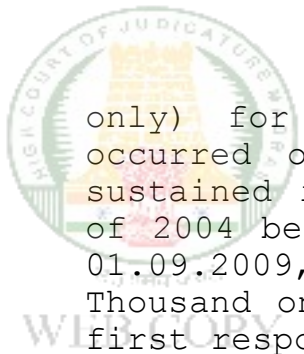
For Respondents : Mr.S.Ayyanar Premkumar for R.1

R.2 - Dismissed
(vide order dated 24.08.2015)

ORDER

This Civil Revision Petition has been filed against the order made in M.C.O.P.No.766 of 2004 by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

2. The petitioner herein is the Insurance Company and the first respondent herein is the claimant before the Tribunal. The first respondent/claimant filed a claim petition in M.C.O.P.No.766 of 2004 on the file of the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge (Fast Track Court No.III), Madurai, seeking a compensation of Rs.1,00,000/- (Rupees One Lakh



only) for the injuries sustained by her in the accident that occurred on 16.03.2003. In the same accident, her husband also sustained injuries and he filed a claim petition in M.C.O.P.No.769 of 2004 before the Tribunal. The Tribunal, vide common order dated 01.09.2009, awarded a compensation of Rs.7,000/- (Rupees Seven Thousand only) with interest at the rate of 7.5% per annum, to the first respondent herein and a sum of Rs.47,000/- (Rupees Forty Seven Thousand only) with interest at the rate of 7.5% per annum, to her husband. Challenging the award of the Tribunal made in M.C.O.P.No.766 of 2004, the present Civil Revision Petition has been filed.

3. Today, when the matter is taken up for hearing, the learned Counsel for the petitioner/Insurance Company has drawn the attention of this Court to the judgment dated 12.01.2017 made in C.M.A(MD)No.30 of 2017 [**National Insurance Co. Ltd., represented through its Divisional Manager v. S.Ramachanadran and another**] which was filed against the order dated 01.09.2009 passed in M.C.O.P.No.769 of 2004 by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Fast Track Court No.3, Madurai and submitted that the appeal filed by the Insurance Company challenging the award of the Tribunal made in the claim petition filed by the husband of the first respondent herein was dismissed and thereby, the award of the Tribunal was confirmed. Since the present Civil Revision Petition also emerged on the common order passed by the Tribunal, she prayed for passing orders on similar lines.

4. Heard the learned Counsel for the first respondent on the above submissions.

5. This Court, vide judgment dated 12.01.2017, while dismissing C.M.A(MD)No.30 of 2017, [**National Insurance Co. Ltd., represented through its Divisional Manager v. S.Ramachanadran and another**], has observed as follows:

"4. The learned counsel appearing for the appellant Insurance Company would submit that even though the accident occurred on 16.03.2003, FIR was registered on 09.09.2003 i.e only after six months. However, the criminal case was also closed by the criminal court as 'time barred'. When such is the position, the Tribunal should not have fixed liability on the driver of the insured vehicle. Further, he would submit that the vehicle was not at all involved in the accident and only thereafter, it has been deliberately roped in.

5. However, a close scrutiny of the award would show that the Tribunal relied P.W.1's evidence and also Ex.P.7, the certified copy of the order passed by the trial court, wherein it has been



clearly stated that the case was closed under Section 468 Cr.P.C for failure on the part of the police to file a final report within a period of limitation. Therefore, Ex.R5 relied upon by the appellant Insurance Company made by the police for closing the case as 'mistake of fact' was found to be clearly erroneous. However, P.W.1 clearly stated that some one, who witnessed the accident, would have given complaint and therefore, he did not give any complaint. Moreover hospital authorities subsequently informed to police about the accident. In those circumstances, the Tribunal rightly found that the accident occurred because of the driver of the vehicle insured with the appellant corporation. Hence, the finding reached by the Tribunal cannot be set aside.

6. The respondent/claimant sustained fracture in the right leg and he was operated and screws and rods were fixed for the fracture of tibia and fibula of the right leg of the petitioner. Because of that, the claimant sustained restriction in mobility and stability in the right leg as deposed by P.W.2 Doctor. Therefore, 32% partial permanent disability was rightly determined by the Tribunal and a sum of Rs.47,000/- was awarded by the Tribunal. Therefore, it would not be interfered with. Moreover the accident occurred as early as on 16.03.2003 and award was passed by the Tribunal about 7 years ago on 01.09.2009. At this distance of time, it is impossible for this Court to entertain this appeal.

7. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, the connected C.M.P.(MD) No. 283 of 2017 is also dismissed.

8. The appellant is directed to transfer the entire amount along with interest and costs through RTGS within a period of six weeks from the date of receipt of copy of this order, if not already deposited."

6. Following the same, this Civil Revision Petition is also dismissed, confirming the award dated 01.09.2009 made in M.C.O.P.No.766 of 2004 by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge (Fast Track Court No.III), Madurai and the petitioner/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.766 of 2004 within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first respondent



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herein/claimant is permitted to withdraw the same by filing necessary application before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

rsb

To

1 THE MOTOR ACCIDENT CLAIMS TRIBUNAL - CUM -
ADDITIONAL DISTRICT AND SESSIONS JUDGE
(FAST TRACK COURT NO.III),
MADURAI.

2 THE SECTION OFFICER,
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1 CC to M/s.S.AYYANAR PREM KUMAR, Advocate (SR-88263[F] dated
20/09/2019)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-88230[F] dated
20/09/2019)

C.R.P (MD) No.2297 of 2010
and
M.P (MD) No.1 of 2010
19.09.2019

JM/25.10.2019/4P/6C