

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.3516 of 2010

(Through Video Conferencing)

Babibhaban

... Appellant

Vs.

1.Subramanian

2.National Insurance Company,
Divisional Office-II,
Ramakrishna Road,
Salem.

(1st respondent set exparte before
the Tribunal)

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.06.2009 made in M.C.O.P.No.457 of 2006 on the file of Motor Accident Claims Tribunal (Additional District Judge) Fast Track Court No.1, Salem.

For appellant : M/s.K.Kuppusamy

For 2nd respondent : Mr.J.Chandran

J U D G M E N T

The appellant was the claimant and is aggrieved by the impugned Judgment and Decree dated 24.06.2009 passed by the learned Additional District Judge (Fast Track Court No.1) Salem in M.C.O.P.No.457 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has rejected the claim on the ground that the appellant has failed to give a detail of the lorry in the claim petition and had failed to prove negligence on the part of the insured vehicle in the accident. The appellant had suffered fracture in the elbow and is said to have undergone treatment at LKM Hospital, Salem. The appellant further submitted that she was earning a sum of Rs.4,000/- p.m. at the time of accident and therefore claimed a compensation of Rs.2,00,000/- for the injury.

3. The Tribunal has dismissed the claim petition on a simple evidence that the appellant has not disclosed the registration number of

the lorry involved in the accident which had hit the insured bus. Aggrieved by the same, the appellant has preferred this appeal.

4. It is the case of the appellant that the accident took place on 28.08.2005 at about 9.15 p.m. when she was travelling in a bus belonging to the 1st respondent insured with the 2nd respondent bearing Reg.No.TN 30 Y 9393. It was alleged that the driver of the bus drove the same in a rash and negligent manner and hit the lorry coming from the opposite direction, as a result of which, the appellant sustained injuries. In support of her case, the appellant filed the documents viz., F.I.R., Wound Certificate, Discharge Summary, Disability Certificate, X-ray and X-Ray report

5. The learned counsel for the appellant submits that the appellant was a passenger. She suffered injury. It is not possible for her to note down the registration number of the lorry and therefore she cannot found fault with. He further submitted that the Insurance Company has to prove the case that the driver of the bus was not negligent and that bus was not involved in the accident and that the lorry was driven in a rash

and negligent manner. In this case, the appellant had suffered fracture in the elbow and was hospitalised. The hospital bills also show that a sum of Rs.30,000/- was spent by the appellant for treatment.

6. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 2nd respondent-Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. The accident has not resulted in permanent disability. At the same time, there is no denying that the appellant had suffered injuries and was inflicted with pain and sufferings due to the accident.

8. Considering the same, I am inclined to partially allow this appeal and award the compensation under the following heads:-

Heads	Amount
Medical expenses	Rs.30,000/-
Pain and suffering	Rs.30,000/-
Loss of amenities	Rs.10,000/-
Total	Rs.70,000/-

9. Consequently, this civil miscellaneous appeal is partly allowed.

The 2nd respondent-Insurance Company is therefore directed to deposit a sum of Rs.70,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of such deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, by filing suitable application before the Tribunal. No costs.

13.08.2020

Internet : Yes / No

Index : Yes / No

kkd

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:-

The Motor Accidents Claims Tribunal,
Additional District Judge (Fast Track Court No.1)
Salem.

C.SARAVANAN, J.

kkd/jen



C.M.A.No.3516 of 2010

WEB COPY

13.08.2020