

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2020

Coram:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Civil Miscellaneous Appeal No.2248 of 2015

United India Insurance Co. Ltd.,
Rep.by its Divisional Manager,
Jawaharlal Nehru Street,
Pondicherry,
Now at Motor Third Party Service Hub
A.R.Plaza, No.35, 36 & 37
45 Feet Road Extension,
Balaji Nagar, Puducherry 605 011. ..Appellant/2nd Respondent

/versus/

1.Dhanapakkiyam ...1st Respondent/claimant

2.T.A.Sarangapani ...2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 praying to set aside the award dated 06.07.2015 passed in M.C.O.P.No.487 of 2006 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge) at Puducherry.

For Appellant :Mr.P.Sankaranarayanan

For Respondents:Mr.T.Sai Krishnan for R1

R2-Not ready in notice

J U D G M E N T

The appeal on hand is preferred against the judgment and decree passed by the Motor Accident Claims Tribunal on 06.07.2015 in M.A.C.T.O.P.No.487 of 2006. The appellant is United India Insurance Company Limited.

2. The learned counsel appearing on behalf of the appellant mainly contended that the alleged accident had occurred on 30.12.2003 and the First Information Report itself had been lodged only on 24.01.2005, after a lapse of more than 1 1/2 years. Therefore, the very accident itself is doubtful. The Tribunal, without considering these basic factors, awarded compensation in favour of the claimant. The evidence of RW1 and Ex.R2 medical records of the claimant reveal that the injuries

sustained by the claimant are not due to any road traffic accident involving the injured and the vehicle. This apart, Ex.R1, which was issued by the Medical Superintendent, Mahatma Gandhi Medical College & Research Institute, Pondicherry, reveals that, at 3.00 p.m., on 30.12.2003, Dhanabakkiyam was travelling on a bicycle with Selvadurai and the cycle tripped on a large stone on the road and tumbled on the right side. The patient thrown backwards and she noticed bleeding her vaginum. So, she was carried to casualty of Mahatma Gandhi Medical College & Research Institute, Pondicherry by Selvadurai (nephew) and Varadhan(neighbour). On examination, the patient was stable but frightened and nervous. Her pulse and blood pressure were normal. The Tribunal has not considered these basic facts and awarded compensation and therefore, the appellant is constrained to prefer this appeal.

3. The learned counsel appearing for the appellant further contended that as per Ex.P2, the Doctor did not suspect that the injured met with any road accident nor the relatives also not mentioned any such road traffic accident before the Doctor and thus, no MLC requisition was made. Under these circumstances, the very accident itself is doubtful and award of compensation is in violation of the provisions of the Act.

4. The learned counsel appearing on behalf of the 1st respondent/claimant reiterated that the Tribunal considered all the facts and circumstances and arrived at a finding that the accident happened due to the rash and negligent driving of the vehicle bearing Reg.No.TN-31-D-3471 belonging to the first respondent. When the accident itself was established before the Tribunal, then there is no reason to interfere with the award of compensation, as contended by the appellant and therefore, the appeal is liable to be dismissed.

5. The learned counsel appearing on behalf of the 1st respondent/claimant is of the opinion that the delay could not defeat the grant of compensation and further, the First Information Report was registered on 24.01.2005 and the said factum was also considered by the Tribunal.

6. Considering the arguments, this Court is of the view that the findings of the Tribunal are erroneous with reference to the date of accident as well as the date of registering the First Information Report. The accident, admittedly, occurred on 30.12.2003 and the petitioner sent a registered complaint on 11.02.2004 and the First Information Report was registered on 24.01.2005 in Crime No.14/2005. Beyond the delay in registering the First Information Report, Ex.R1 document reveals that the Doctor, who treated the 1st respondent/claimant, recorded the statement of the claimant and accordingly, the claimant was

travelling on a bicycle with one Selvadurai and the bicycle tripped on a large stone on the road and tumbled on the right side. The patient thrown backwards and she noticed bleeding her vaginum. There is no reason to disbelieve the statement recorded by the Doctor, who treated the claimant, in view of the fact that during the relevant point of time, the 1st respondent/claimant has not disclosed any accident or otherwise. In the absence of any such disclosure by the patient, during the examination by the Doctor, then the Tribunal is failed in taking note of these factors before granting compensation. Though these factors are recorded by the Tribunal, the Tribunal has not appreciated these factors, while granting compensation. The Tribunal considered as if the accident took place and accordingly examined the coverage of policy and granted compensation and such approach is perverse and not in consonance with the settled principles.

7. Mere registration of a case or rise coverage of policy, are insufficient to grant compensation. Beyond these factors, the Tribunal is bound to consider whether the accident is genuine or not and the claimant had involved in the accident or not and the Doctor's evidence are reliable or not and other relevant facts are also to be considered. It is not as if the compensation is to be awarded merely on the ground that the case was registered and the vehicle involved in the accident was covered under the Insurance Policy that could not be the approach and all other related factors are also to be considered. For the purpose of ascertaining the genuinity of the insurance and the reason for the cause of the injury, all the factors are imminent for the purpose of granting compensation under the provisions of Motor Vehicles Act. When the claimant herself could not able to establish the basic factum regarding the accident, then the Tribunal has committed an error in awarding the compensation.

8. Under these circumstances, this Court is inclined to consider the grounds raised in the appeal and accordingly, the judgment and decree passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.487/2006 dated 06.07.2015 is quashed. This Civil Miscellaneous Appeal No.2248 of 2015 stands allowed. No costs. The award amount, if any, deposited by the appellant is permitted to be withdrawn, by filing an appropriate application, before the Tribunal concerned.

-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1.The Additional Subordinate Judge
The Motor Accidents Claims Tribunal,
Puducherry.

2.The Section officer
VR Section
High Court, Madras 104.

+1 Cc to Mr.T.Sai Krishnan, Advocate sr 19971

+1 Cc to Mr.P.Sankaranarayanan, Advocate sr 19089.

C.M.A.No.2248 of 2015

RSV(CO)
SP(10/09/2020)



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