

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2675 of 2019
and
C.M.P.No.13239 of 2019

The Divisional Manager,
United India Insurance Co., Ltd.,
Divisional Office, Katpadi,
Ramanas No.84, 2nd Floor,
14th East Cross Road,
Vellore. .. Appellant/2nd Respondent

Vs.

1.Ambika ..1st Respondent/Petitioner
2.Mr.V.R.Devandiran ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Decree and Judgment dated 30.01.2019 made in M.C.O.P.No.382 of 2017 on the file of the Special Sub Judge (MACT), Krishnagiri.

For Appellant : Mr.C.Paranthaman

For Respondents: No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 30.01.2019 made in M.C.O.P.No.382 of 2017 on the file of the Special Sub Judge (MACT), Krishnagiri.

2. The Civil Miscellaneous Appeal on hand is filed by the United India Insurance Company Limited, questioning the correctness of the Judgment and Decree dated 30.01.2019 passed in M.C.O.P.No.382 of 2017.

3. Notice served on the respondents/claimants. However, the claimants have chosen not to appear before this Court.

4. The learned counsel appearing on behalf of the

appellant/Insurance company mainly raised a ground that the respondents/claimants have not sustained any injury due to the accident. Admittedly, the accident occurred on 26.12.2016 at about 09.45 P.M in Kaveripattinam to Krishnagiri at Thimmapuram Junction Road. Kaveripattinam Police Station filed a case in Crime No.855/2016 under Sections 279 and 337 of I.P.C.

5. The contention of the appellant/Insurance Company is that as per the charge sheet prepared by the Sub Inspector of Police, 11 persons were injured and the name of the respondent/claimant Smt.Ambika, W/o.Suresh, was not found in the list of injured persons. Even in the F.I.R, the name of the claimant is not found. She was not admitted or taken for treatment to the Hospital on the date of accident on 26.12.2016. Therefore, the Claim Petition itself is filed on false set of facts and the Tribunal has not considered the evidences and witnesses produced by the appellant/Insurance company, establishing that the Claim Petition is not genuine and the name of the claimant was not found in the list of injured persons nor she was admitted in the hospital for treatment on the date of accident. Even in the charge sheet, the name of the claimant is not found. In case, there was a omission on the date of accident atleast the name of the claimant ought to have been included in the charge sheet. However, as per the charge sheet filed by R.W.1, Sub Inspector of Police, Kaveripattinam Police Station, the name of the 1st respondent claimant is not available.

6. Considering the ground regarding the liability raised by the appellant / Insurance company, this Court is able to find out that the accident occurred on 26.12.2016, Ex.P1/F.I.R was filed and therefore, there is no dispute regarding the accident. However, while considering the liability aspect, the Tribunal made a finding that R.W.1 and R.W.2 were examined and Ex.R1 was marked. R.W.1 is Special Sub Inspector of Police from Kaveripattinam Police Station. He produced the copy of the charge sheet prepared by the Investigating officer, Thiru.Vijayasankar, Special Sub Inspector of Police in the said Criminal case as Ex.R1. The said Sub Inspector of Police deposed that as per the charge sheet, 11 persons were injured in the occurrence and the name of the 1st respondent / claimant Smt.Ambika, W/o.Suresh was not found in the said list of injured witnesses. R.W.1 deposed that the case was taken on file of Krishnagiri JM1 Court as S.T.C No.782/17 and the accused lorry driver Karthikeyan had admitted the offence and had paid a total fine of Rs.6,500/-. R.W.2 is an official from the United India Insurance Company and he deposed that the 1st respondent / claimant was not at all injured in the accident and her name was not found in the name of injured persons prepared by the

Investigating officer and therefore, the Claim Petition itself is not maintainable.

7. The Tribunal with reference to the above facts, made an observation that the charge sheet is not conclusive proof of its contents and further, Ex.P.1/FIR, it is mentioned that 10 persons sustained blood injuries and some others sustained simple injuries in the accident. In this regard, P.W.1 explained that her son immediately after the accident, took her for local treatment and she was taken to Government Hospital only on the next day on 27.12.2016. However, the Police did not enquire about her in the Government Hospital. As per Ex.P3, Discharge Summary of V.J.S.Vijaya Hospital, Krishnagiri, the 1st respondent / claimant was admitted on 27.12.2016, i.e., the day after the accident for the injury sustained.

8. It is important to note that beyond all these evidences, the Tribunal has picked up the vital document, which is Ex.P7. P.W.1 produced the copy of the accident Register as Ex.P7. In the said document, it is noted by the duty Doctor that she was brought there for injuries sustained in the RTA on 26.12.2016, 07.30 p.m, near Thimmapuram bye pass, wherein the Bus met with an accident with a Lorry. Ex.P7 document/Accident Register was marked with the consent of the appellant / Insurance company. The said Accident Register unambiguously portrays that the 1st respondent / claimant sustained injuries and the duty Doctor made an entry in the Register on 26.12.2016 at 7.30 p.m. The said entry made in the Accident Register corroborates with the oral evidence of P.W.1 in respect of the accident as well as the injuries sustained by her. However, she went to the Government Hospital only on the next day, because of the fact that the Claimant had taken treatment in the Government Hospital one day after the accident. The fact regarding the entry made by the duty Doctor cannot be repudiated. The Tribunal relied on the said Ex.P7 document and arrived a conclusion that the 1st respondent / claimant was also an injured person and consequently, she is entitled for compensation.

9. This Court is of the considered opinion that though the name of the 1st respondent claimant was not found in the F.I.R as well as in the charge sheet as rightly considered by the Tribunal, the Accident Register reveals that the duty Doctor made proper entries regarding the accident as well as the nature of injuries sustained by the 1st respondent/claimant. Ex.P7 document is a reliable document and therefore, the benefit should certainly go to the injured person and the appellant /

Insurance company cannot make any advantage with reference to the copy of the F.I.R as well as the charge sheet.

10. Regarding the quantum of compensation is concerned, 25% permanent disability was taken by the Tribunal for the purpose of awarding disability compensation. Accordingly, Rs.75,000/- was awarded towards disability compensation. With reference to the compensation granted under the other heads, it is reasonable and just compensation. Thus, no interference is called for with reference to the quantum of compensation. However, the Tribunal has granted 9% interest, which is on the higher side. Thus, this Court is inclined to modify the interest amount from 9% to 7.5%. Accordingly, the 1st respondent/claimant is entitled for the compensation of Rs.1,91,000/- along with the interest at the rate of 7.5% per annum.

11. With this modification, the award of the Tribunal stands confirmed in all other respects. The 1st respondent / claimant is entitled for the interest at the rate of 7.5% per annum.

12. The learned counsel for the appellant made a submission that the entire award amount had already been deposited. The 1st respondent/claimant is permitted to withdraw the total award amount of Rs.1,91,000/- (Rupees One Lakh and Ninety One Thousand only) along with the interest at the rate of 7.5% per annum by filing an appropriate application before the Tribunal and the balance amount is directed to be disbursed in favour of the appellant / Insurance company. The respective parties are permitted to file appropriate application before the Tribunal for withdrawal and the payments are to be made through RTGS.

13. Accordingly, the Judgement and Decree dated 30.01.2019 made in M.C.O.P.No.382 of 2017 stands modified and the Civil Miscellaneous Appeal in C.M.A.No.2675 of 2019 stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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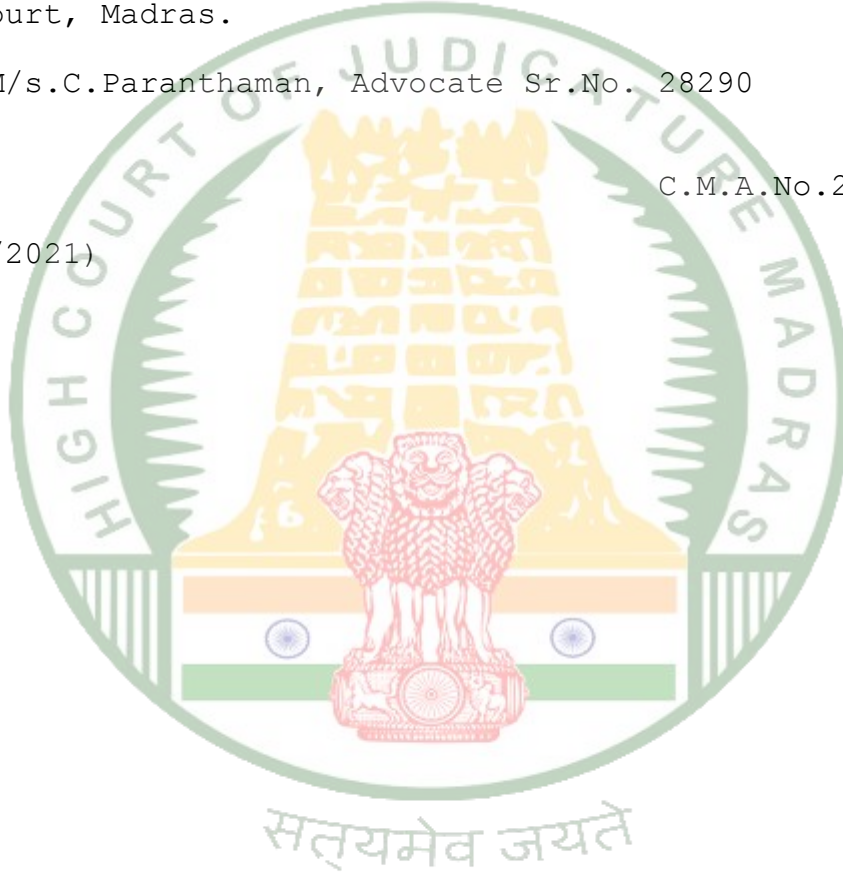
1.The Motor Accident Claims Tribunal,
The Special Sub Judge,
Krishnagiri.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.C.Paranthaman, Advocate Sr.No. 28290

C.M.A.No.2675 of 2019

SSD(CO)
RMP(06/01/2021)



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