



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.1224 of 2008

Bajaj Allianz General Insurance Co. Ltd.

Rep. By its Branch Manager

K.M.A.Complex

12, G.Ram Nagar

Bye-Pass Road

Madurai

... Appellant/2nd Respondent

-vs-

1.A.Rajeswari

...1st Respondent/Petitioner

2.K.S.M.Rajasekaran

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 06.05.2008 made in M.C.O.P.No.158 of 2005, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.D.Sivaraman for R1

No appearance for R2

J U D G M E N T

This civil miscellaneous appeal has been filed by the Insurance Company challenging the Award, dated 06.05.2008, passed in M.C.O.P.No.158 of 2005, by the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Sivagangai.

2. The first respondent as claimant filed M.C.O.P.No.158 of 2005, seeking compensation of Rs.1,00,000/-, on the ground that on 11.02.2005, at 09.45 a.m. when she was going to attend her work at Allies Miller School, a Motorcycle bearing registration No.TN63 D8411, belonging to the second respondent and insured with the appellant - Insurance Company, came in a rash and negligent manner and dashed against her. In the accident, the first respondent sustained fractures and also external injuries all over the body.

3. It is the further case of the claimant that soon after the accident, she was taken to the Vaithiya Salai at Ulagu Urani, wherein she took treatment till 23.03.2005. Thereafter, she was admitted in the Government Hospital at Sivagangai, where she took treatment as inpatient from 24.03.2005 to 26.03.2005. Alleging that the rider of the Motorcycle is responsible for the accident,

<https://hservices.courts.gov.in/hservices/case-details>
the claim petition was filed



4. The appellant - Insurance Company resisted the claim petition mainly contending that the accident did not take place as stated by the claimant and the vehicle was introduced to make a false claim against the Insurance Company.

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5. Before the Tribunal, on the side of the claimant, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked. On the side of the Insurance Company, R.Ws.1 and 2 were examined and Exs.R1 and R2 were marked. That apart, C.Ws.1 to 3 were examined as Court witnesses.

6. Upon consideration of the oral and documentary evidence produced by the respective parties, the Tribunal came to the conclusion that the rider of the Motorcycle was responsible for the accident and awarded compensation of Rs.45,200/- along with interest at the rate of 7.5% per annum. Aggrieved over the same, the Insurance Company has preferred the present civil miscellaneous appeal.

7. Mr.S.Srinivasa Raghavan, learned counsel for the appellant - Insurance Company, would contend that though the accident had taken place on 11.02.2005, admittedly near the Police Station, but the complaint was lodged only after a lapse of 42 days, which shows that a vehicle was arranged to make a false claim against the appellant - Insurance Company. It is further contended that though in the original counter the accident has been admitted, but an additional counter has been filed by the appellant - Insurance Company disputing the accident itself.

8. Per contra, Mr.D.Sivaraman, learned counsel for the first respondent - claimant would submit that immediately after the accident, the claimant was admitted in a Nattu Vaithiya Salai at Ulagu Urani and after realizing that there was no improvement, the claimant was shifted to the Government Hospital at Sivagangai on 24.03.2005. According to the learned counsel, the delay in lodging the complaint has been properly explained by the claimant. Further, on the basis of the complaint, the Police have also investigated the case and filed the final report. It is the submission of the learned counsel that after admitting the accident in the original counter, it is not open to the appellant - Insurance Company to take a contrary plea in the additional counter and hence, prayed to dismiss the appeal.

9. In the matter on hand, it is evident from the records that the claimant sustained injuries in the accident occurred on 11.02.2005. The F.I.R (Ex.P1) and the Final Report (Ex.P4) would show that a criminal case was registered against the rider of the Motorcycle. It is apposite to notice that the owner of the



vehicle is closely related to the Police working in the Police Station, near to which the accident had taken place. The Tribunal accepting the evidence of P.W.1 and on the basis of Exs.P1 and P4 came to the conclusion that the rider of the Motorcycle was responsible for the accident. In the light of the above facts, I am not impressed with the argument of the learned counsel for the appellant that the vehicle was introduced to make a false claim.

10. The evidence of the Doctor, who was examined as P.W.2; Wound Certificate (Ex.P2), Disability Certificate (Ex.P5) and X-rays (Ex.P6) would show that the claimant has suffered 34% permanent disability. The Tribunal, after carefully considering the oral and documentary evidence produced by the parties, has awarded compensation of Rs.45,200/- along with interest at the rate of 7.5% per annum. The amount appears to be fair and reasonable.

11. For the reasons stated above, I find no merit in this appeal and the same is, therefore, liable to be dismissed. Accordingly, the civil miscellaneous appeal is dismissed. In view of the dismissal of the appeal, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

KRK

Note :

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To:
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Sivagangai.

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Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-20894[F] dated 03/11/2020)

+1 CC to Mr.D.SIVA RAMAN, Advocate (SR-20848[F] dated 02/11/2020)

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