



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 11.01.2021

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**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

C.M.A(MD)No.1111 of 2011  
and  
M.P(MD)No.1 of 2011

The Oriental Insurance Company Ltd,  
represented by its  
Divisional Manager,  
South Main Street,  
Taluk and City No.18/58,  
Thanjavur Municipality.

...Appellant/Respondent No.2

Vs.

1.Jeyalakshmi

...1<sup>st</sup> Respondent/Petitioner

2.Thirunavukkarasu

...2<sup>nd</sup> Respondent/ Respondent No.1

PRAYER:Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.227/2003, dated 17.07.2006 on the file of the Motor Accidents Claims Tribunal/Sub Court, Pattukottai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : No appearance

**JUDGMENT**

The Insurance Company has filed this appeal, questioning the judgment and decree passed by the Motor Accidents Claims Tribunal (Sub Court), Pattukottai in M.C.O.P.No.227 of 2003, dated 17.07.2006, wherein, the Tribunal has awarded a sum of Rs.1,06,000/- as against the claim of Rs.5,00,000/-.

2.The case of the claimant in brief is as follows:

(i) The 1<sup>st</sup> respondent herein filed a claim petition before the Tribunal, alleging that on 03.10.2002 at about 07.00pm, she was walking from Thandarampattu to her house. At that time, a two wheeler bearing Registration No.TN49 H 9694 came in a high speed and hit her. In the impact, she sustained injuries and immediately, she was taken to the Kanagesa Hospital at Pattukottai



and thereafter, she took treatment at Vinodhan Memorial Hospital at Thanjavur. Since the accident occurred due to the negligence of the Driver of the vehicle, the owner as well as the Insurance Company are liable to pay the compensation.

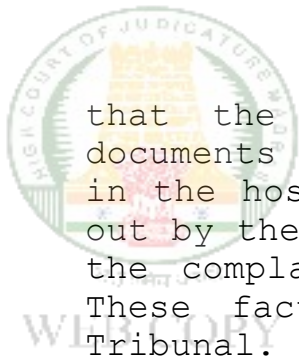
(ii) In the original counter, the appellant disputed the manner of the accident, pleaded in the claim petition and it is also stated that the claim was excessive. Further in the additional counter filed on 19.01.2004, the appellant has specifically stated that the claimant sustained injuries in an accident that took place on 02.10.2002 and she was taking treatment at Kanagesa Hospital at Pattukottai from 02.10.2002 till 04.10.2002 and hence, the claim is bogus and no liability can be fastened on the Insurance Company.

3.Before the Tribunal the claimant had examined 6 witnesses and marked 11 documents. On the side of the appellant/ Insurance Company, three witnesses were examined and three documents were marked. On appreciation of the evidence adduced by the parties, the tribunal came to the conclusion that the rider of the two wheeler was responsible for the accident and awarded compensation as stated supra. Aggrieved over the judgment and decree of the Tribunal, the present appeal is filed.

4.Mr.C.Jawahar Ravindran, learned Counsel appearing for the appellant would urge that the Tribunal failed to note that actually the claimant has sustained injury in an accident that had taken place on 02.10.2002, in which, she was hit by a vehicle and to make a false claim, it was pleaded that she sustained injury in the accident that had taken place on 03.10.2002. It is also contended that there was a delay of 4 days in preferring the complaint and the evidence adduced on behalf of the appellant was not properly appreciated by the Tribunal.

5.Though the respondents were served with notice and their names were printed in the cause list, none appeared for them.

6.A perusal of the records would reveal that the 1<sup>st</sup> respondent approached the Tribunal, contending that she sustained injury in the accident that had taken place on 03.10.2002. A perusal of the additional counter filed by the appellant would show that they have categorically stated that the claimant sustained injury on 02.10.2002 and she was taking treatment upto 04.10.2002 in Kanagesa Hospital at Pattukottai, so, the case of the claimant is bogus. To substantiate the said defence, they examined one N.Sekar, who was working as a Manager in Kanagesa hospital as RW2 and also marked Exs R1 and R2. The evidence of RW1 and exhibits R1 and R2 would reveal that the claimant suffered injury in the accident that had taken place on 02.10.2002. RW2 has also stated



that the claimant was hit by a bicycle on 02.10.2002. The documents available on record show that she was taking treatment in the hospital from 02.10.2002 to 04.10.2002. As rightly pointed out by the learned Counsel for the appellant, the delay in lodging the complaint was also not properly explained by the claimant. These facts have been overlooked and not appreciated by the Tribunal.

7.Taking note of the above facts, I am of the opinion that the claimant is not entitled for the compensation and hence, this appeal is allowed. The judgment and order of the Tribunal, dated 17.07.2006 in M.C.O.P.No.227 of 2003 is set aside.

8.It is represented that the while granting interim stay, this Court directed the appellant to deposit the entire award amount. Since the award of the tribunal is set aside, the appellant is entitled to get back the money, deposited to the credit of the claim petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Motor Accidents Claims Tribunal (Subordinate Judge),  
Pattukottai.

Copy to

The Section Officer,V.R.Section,  
Madurai Bench of Madras High Court, Madurai.(2 copies)

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**11.01.2021**

PK(CO)

TR(19.02.2021) 3P 4C