



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A (MD) No.287 of 2010

and

M.P (MD) No.2 of 2010

WEB COPY

The General Manager
United India Insurance Co., Ltd.,
23-E, E.V.R.Road,
Puthoor,
Trichy-17

... Appellant/2nd Respondent

Vs.

1.Mrs.Jenitha

...1st Respondent/Claimant

2.Leoniya

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 19/12/2008 made in M.C.O.P.No.998 of 2005 on the file of the Motor Accidents Claims Tribunal, (III Additional Sub Judge), Trichy.

For Appellant : Mr.N.Murugesan
For R1 : Mr.N.Sudhagar Nagaraj
For R2 : No appearance

JUDGMENT

Challenging the award passed by the Motor Accidents Claims Tribunal(III Additional Sub Judge), Trichy, in M.C.O.P.No.998 of 2005, dated 19/12/2008, the appellant/Insurance Company has filed this appeal.

2.It is a case of injury. The first respondent filed a claim petition seeking compensation of Rs.2,00,000/-. It is her case before the Tribunal that on 12.04.2004 at 10.30 a.m., the second respondent herein, who is the owner of the TVS Scooty, bearing Registration No.TN45 S 4807, drove the vehicle at Trichy along Pudukkottai main road, in which, the claimant was a pillion rider. It is her further case that the vehicle was driven in a rash and negligent manner and hence, it was slipped and she sustained fracture and injury. The claimant was immediately taken to Trichy Government Hospital for treatment.

3.Resisting the claim, the second respondent Insurance Company filed their counter denying the manner of accident as pleaded by the claimant. It is stated that the vehicle was driven by the claimant herself and hence, the Insurance Company cannot be made liable to pay the amount. It is also stated that the complaint was given, after a lapse of 11 days, without any explanation, which shows that it is a fake case.

4.Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P5 were marked. On the side of



the appellant, one Jeyaraman, was examined as R.W.1 and Ex.R.1 copy of Insurance Policy was marked.

5.The claimant gave evidence as P.W.1. Praburaj, who gave evidence as P.W.3. In the claim petition, it has been specifically stated that the vehicle was driven by the owner of the vehicle, who is the second respondent herein. It appears in the wound certificate, which was marked as Ex.P.2, wherein, it is stated that the vehicle was driven by the claimant herself. However, after 11 days, FIR was registered against one Coloumbus, who is the sister's son of the claimant. He also pleaded guilty before the criminal case and paid the fine amount and the judgment copy was marked as Ex.P.3. Based on the above evidence, the Tribunal held that the vehicle was driven by the said Coloumbus and he was responsible for the accident.

6.It is relevant to point out that in the claim petition, it is her specific case that the owner of the two wheeler drove the vehicle, at the time of accident. In Ex.P.2, wound certificate, it is stated that the vehicle was driven by the claimant herself. But, the claimant gave a complaint against her sister's son Coloumbus with delay of 11 days. The claimant did not give any explanation for the delay in lodging the complaint. The averments made in the claim petition and the reference made in the wound certificate shows that the vehicle was not driven by the second respondent, who is the owner of the vehicle. Therefore, I am of the view that the claimant has not come to the Court with clean hands and she is not entitled for compensation in the claim petition.

7.It is represented by Mr.N.Murugesan, learned counsel appearing for the appellant/Insurance Company that the appellant/Insurance Company has deposited the entire award amount of Rs.53,000/- along with interest at the rate of 7.5% p.a., and the claimant was also permitted to withdraw 50% of the award amount. Since the entire award amount is set aside and the claim petition is dismissed, the appellant Insurance Company is permitted to withdraw the award amount lying to the credit of the claim petition and the award passed by the Tribunal in M.C.O.P.No.998 of 2005, dated 19.12.2008, is set aside.

8.With the above observation, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Motor Accidents Claims Tribunal,
(III Additional Sub Judge),
Trichy.

2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-2537[F] dated 01/02/2021)

C.M.A (MD) No.287 of 2010
and
M.P (MD) No.2 of 2010
29.01.2021

SGS (CO)
KB (05.03.2021) 3P 5C