



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.471 of 2010

M.Kaniammal : Appellant/Petitioner

Vs.

1.E.Philip Balasing

2.Bajaj Alliance General Insurance

Company Limited,
through its Branch Manager,
12G, Ram Nagar,
K.M.A.Complex,
First Floor, Bye Pass Road,
Madurai-10.

(R1 Exparte, hence,
dispense with)

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to allow this appeal in M.C.O.P.No.6 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Tirunelveli, dated 29.12.2009.

For Appellant : Mr.T.Selvakumaran
For R1 : Ex-parte
For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Tirunelveli in M.C.O.P.No.6 of 2008, the claimant has come up with this appeal.

2. The brief facts of the case are that the claimant was proceeding by walk on Kadayam-Tenkasi main road on 23.08.2007 at 8.30 p.m. It is alleged that the vehicle owned by the first respondent and insured with the second respondent bearing Registration No.CT-100 TN-76-B-4351, which was coming from opposite direction came in a high speed and hit against the claimant. In



the impact, she sustained injury and immediately, she was taken to Tenkasi Government Hospital and from where, she was referred to Tirunelveli Medical College Hospital. She took treatment as inpatient from 24.08.2007 to 06.09.2007 and again she was admitted in the hospital on 04.10.2007 and discharged on 17.11.2007. It is also stated that she underwent surgery for the fracture on the right shoulder and a rod was also fixed. The claimant sought compensation of Rs.5,00,000/-, but the Tribunal having found that the vehicle was substituted, rejected the entire claim petition. Challenging the same, the present appeal has been filed.

3. Mr.T.Selvakumaran, learned counsel appearing for the appellant would urge that the claimant is an illiterate lady, aged about 65 years and when she was admitted in the Government Hospital at Tenkasi the vehicle number was wrongly mentioned as TN-72-Y-1782, but when the FIR was registered on 24.08.2007, which was against the driver of the offending vehicle and hence, this order of dismissal based on the evidence of R.W.1 cannot be countenanced. He would further add that the claimant sustained 40% disability and in order to prove the same, she has produced Ex.P9-disability certificate and also examined Dr.Ramaguru.

4. Per contra, Mr.S.Srinivasa Raghavan, learned counsel appearing for the second respondent justified the conclusion reached by the Tribunal and prayed for dismissal of the appeal.

5. Heard the rival submissions made by both parties and perused the materials available on record.

6. In the matter on hand, it is not in dispute that the appellant sustained injury on 23.08.2007 at 8.30 p.m. It is to be seen that when she was taken to Government Hospital, Tenaksi, it was stated that she was hit by a two-wheeler bearing Registration No.TN-72-Y-1782. Admittedly, a complaint was given on the next day i.e., on 24.08.2007 and it was registered against the driver of the vehicle bearing Registration TN-76-B-4351. Ex.P6 shows that final report was filed against the driver of the said vehicle. The vehicle was seized and it was examined by the Motor vehicle Inspector and the report was marked as Ex.P3.

7. A perusal of P.W.1 evidence would show that the vehicle No.TN-72-Y-1782 was given by a person, who carried the appellant to the hospital for treatment. So the findings of the Tribunal that the vehicle has been substituted by the appellant cannot be sustained. The evidence on records reveal that the driver of the vehicle bearing Registration No.TN-76-B-4351 caused the accident.

8. Insofar as quantum is concerned, P.W.1 has deposed about the injuries sustained by her and treatment given in the



Government Hospital. Ex.P7 and Ex.P8 are the discharge summary, records show that the appellant took treatment in the Government Hospital for a period of one month. The evidence of P.W.3 and Ex.P9 would prove that the claimant suffered 40% permanent disability.

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9. Considering the evidence adduced by the claimant, this Court is of the view that the appellant would be entitled for Rs.70,000/- with interest at the rate of 6% p.a., from the date of claim petition till the date of realisation. The second respondent-Insurance Company shall deposit the award amount with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the award amount by filing formal petition before the Tribunal.

10. In fine, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

AM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

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

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-4594[F] dated 11/02/2021)

+1 CC to Mr.T.SELVA KUMARAN, Advocate (SR-4711[F] dated 12/02/2021)

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