



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29..11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3792 of 2019

and CMP.No.21824 of 2019

The National Insurance Company Ltd.,
Branch Office-I
No.624, Jawaharlal Road,
Pondicherry.

.. Appellant

versus

1. Amirdham

2. Ramasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act to set aside the award passed in MCOP No.229 of 2010, dated 28.04.2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Additional Subordinate Court, Virudhachalam.

For appellant : Mr.Michael Visuvasam J

For Respondents : Mr.A.G.Rajan R1

R2 – No appearance

J U D G M E N T

The Insurance Company has come forward with this appeal, as against the award passed in MCOP No.229 of 2010, dated 28.04.2018 on



the file of the Motor Vehicle Accidents Claims Tribunal, Additional Subordinate Court, Virudhachalam.

2. It is the case of the appellant that on 11.08.2009 at about 6.30 a.m. When the first respondent was riding his bicycle at South street, Srimusnam, at that time, a motor cycle bearing reg. No.PY. 01 AW 8561 Baja Pulsar coming in opposite direction suddenly crossed right side of the road and dashed the first respondent. Due to which, the first respondent sustained injuries. Thereafter admitted in hospital for taking treatment. Thereafter, the first respondent/claimant has filed claim petition for the injuries sustained by her before the Motor Accidents Claims Tribunal claiming compensation for a sum of Rs.2,00,000/-. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the claim petition in part and awarded compensation for a sum of Rs.1,18,000/- to the first respondent and the Tribunal has directed the insurance company to pay the award amount. Challenging the quantum of compensation, the present appeal has been filed by the Insurance company.

3. The learned counsel appearing for the appellant Insurance company submitted that admittedly, the accident had happened on 11.08.2009 at



6.00 pm. According to the claim statement, the accidental had happened on 13.08.2009 at 6.00 pm. However, the first respondent admitted in the hospital on 15.08.2009 and took treatment upto 18.08.2009. He lodged a complaint on 20.08.2009. and AR copy issued on 18.08.2009. There is no proper explanation for the delay in filing the claim petition. Further the claimant has taken treatment in the government hospital and in this regard, no proof was filed. Without considering the same, the Tribunal has fixed the negligence as against the owner of the vehicle and fastened the liability as against the insurance company, which is not sustainable. Accordingly, the learned counsel pray for allowing the appeal.

4. The learned counsel for the first respondent submitted that admittedly the accident had happened on 11.08.2009 at 6.00 pm. Due to rash and negligence driving of the driver of the motor cycle. Immediately after the accident, the first respondent took treatment in the private hospital. Since the same was not effective, he was against admitted in the other hospital on 15.08.2009 and discharged on 18.08.2009 . The first respondent made a complaint before the concerned jurisdictional police on 18.08.2009 and FIR was registered on 20.08.2009. However, the Police has been closed the case as mistake of facts after four years without issuing RCS notice to



the claimant. Further, before the trial Court, the respondent therein have not taken any effective steps to disprove the accident. Hence, the learned counsel prays to dismiss the appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, an accident was happened on 11.08.2009 at 6.00 pm as per the claim statement. On perusal of the FIR, it is seen that the accident had happened on 11.08.2009. But the claimant admitted in the hospital only on 15.08.2009 and AR copy issued on 18.08.2009. There is no proper explanation from the claimant for taking treatment in the private hospital and the Doctor was not examined before the Tribunal. There is no proper explanation submitted by the claimant from 11.08.2009 to 15.08.2009 about the accident. In the absence of the explanation, this Court presumes that no such accidental had happened and the appellant insured vehicle was not involved in the accident at the relevant point of time. The claimant lodged a complaint before the Law Enforcing Agency on 18.08.2009 and the FIR was registered on 20.08.2009. After lapse of four years, a case has been closed as "mistake of



facts". The claimant has not challenged the same in any of the forum. Under these circumstances, the claim made by the claimant itself is misconceived and therefore, the award passed by the Tribunal is set aside.

7. In the result, the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2023

Index : Yes/no
RLI

To

The Motor Vehicle Accidents Claims Tribunal,
Additional Subordinate Court, Virudhachalam.



WEB COPY



6

M.DHANDAPANI.,J.

RLI

C.M.A.No.3792 of 2019

29.11.2023