



C.M.A.No.2267 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 2267 of 2018

Unnamalai

.. Appellant

Versus

1.P.S.Shabeer

2.The Branch Director,
National Insurance Company Limited,
333, Anuradha Complex, Bangalore Road,
Krishnagiri-635 001.

.. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.01.2009 made in M.C.O.P.No.171 of 2006 on the file of the Motor Vehicles Claims Tribunal, Principal Subordinate Judge, Sub Court, Krishnagiri.

For Appellant	:	Mr.P.Dinesh Kumar
For Respondents	:	Mr. D.Baskaran for R2

JUDGMENT

The claimant, aged 28, had met with an accident on 08.05.2003 while she was walking in the road in front of Moorthy Radio House, Bangalore road.

For the injuries she sustained, she has filed M.C.O.P.No.171 of 2006 before

the Tribunal. The Tribunal awarded a sum of Rs.10,000/-, payable by the



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owner of the vehicle as against the total claim of Rs.30,000/- made by her.

Feeling aggrieved, the claimant is before this Court with this appeal.

2. According to the claimant, on 08.05.2003 while she was walking on the road, she was hit by the auto rickshaw bearing registration number TN 29 X 5877 owned by the first respondent and insured with the second respondent. It is her claim that, she had initially taken treatment for the injuries at Government Hospital at Krishnagiri and thereafter taken treatment in a private hospital. It is her contention that she was engaged in vegetable vending and earning a sum of Rs.3000/- per month. However, due to the accident she could not do her business, as before, and it has resulted in loss of earning. Therefore, she has filed the present claim petition.

3. The claim petition was contested by the Insurance Company by stating that no such accident had ever taken place and the claim made by the claimant is false. It is the contention of the Insurance Company that the First Information Report was registered after a delay of seven months with the aid of police. It is also stated that the injuries said to have suffered by the claimant are not correct. Even otherwise the injuries are simple in nature for which a sum of Rs.30,000/- claimed as compensation by the claimant is onerous. In any



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event, in the absence of any proof to show that there was an accident in which the claimant had sustained injuries, this claim petition is not maintainable and it is liable to be dismissed.

4. Before the Tribunal, the claimant examined herself as P.W.1 and marked Exs.P.1 to P.6. On behalf of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Exs.R.1 to R.5 were marked on the side of the respondents.

5. The Tribunal on an analysis of the oral and documentary evidence, held that the driver who has caused the accident did not possess a valid driving licence at all. For this purpose, the Tribunal placed reliance on the evidence of R.W.2, who has deposed that the driver did not possess a valid driving license at the time of accident and therefore the Tribunal concluded that there is a violation of condition of policy. Even otherwise, the Tribunal held that the injuries said to have suffered by the claimant are not such that it warrants compensation of Rs.30,000/- payable to her. Accordingly the Tribunal concluded that for the simple injuries suffered by the claimant, a compensation of Rs.10,000/- is to be paid. Accordingly the Tribunal directed the owner of the vehicle to pay the compensation amount and exonerated the



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Insurance Company from payment of any compensation. As against the award passed by the Tribunal, the owner of the Auto rickshaw did not file any appeal.

This appeal is filed by the claimant for enhancement.

6. It is evident from the record that the claimant suffered simple injuries in the nature of swelling and laceration in the lower leg. The claimant did not examine any Doctor on her side. Even though the claimant marked Ex.P.1/F.I.R., it is evident that the first information report was registered after seven months from the date of accident. Therefore, no credence or significance could be given to Ex.P.1.

7. Learned counsel appearing for the appellant mainly contended that even the compensation of Rs.10,000/- ordered to be paid by the Tribunal has not been deposited by the owner of the vehicle. It is his contention that even though the claimant proved that she met with the accident due to the rash and negligent driving of the Auto rickshaw driver, the Tribunal without taking note of the same has awarded a very meagre compensation of Rs.10,000/- and directed it to be paid by the owner of the Auto rickshaw. In any event, the Tribunal ought to have directed the Insurance Company to pay the compensation amount and to recover it from the owner of the Auto rickshaw.



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In order to do complete justice, according to the learned counsel, it is just and necessary that Insurance Company must be directed to pay the compensation amount and to recover it from the owner.

8. On a overall analysis of the facts and circumstances of the case, this Court concludes that the injuries suffered by the claimant are simple in nature and taking note of the same the Tribunal has awarded just and fair compensation of Rs.10,000/-. However while doing so, the Tribunal directed the owner of the Auto rickshaw to pay the compensation amount on the ground that there was a violation of policy condition. However in order to do complete justice, this Court is of the view that the compensation amount shall be paid by the Insurance Company and thereafter it could be recover it from the owner of the Auto rickshaw. Accordingly, the Civil Miscellaneous Appeal is partly allowed by holding that the Insurance Company shall pay the compensation of Rs.10,000/- with interest at the rate of 6% per annum and thereafter they can recover it from the owner of the Auto rickshaw in the manner known to law.

No costs.

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Index : Yes / No
Internet : Yes/ No

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A.A.NAKKIRAN. J.,

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To

1. The Subordinate Court,
Krishnagiri.
- 2.The Record Keeper,
V.R.Section,
High Court Madras,
Chennai.

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