



C.M.A.(MD)No.1303 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.11.2022

Delivered On : 15.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1303 of 2009

Malarkodi

.. Appellant /claimant

Vs.

1.Mathiazhagan (died)

2.The Manager,

The New India Insurance Company Ltd.,

No.84-B, Market Road,

Thanjavur Town.

3.Govindasamy

4.Muthu

5.Viswanathan

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal – Additional Sub Judge, Thanjavur.

For Appellant : Mr.B.Jameel Arasu

For Respondent No. 2 : Mr.J.S.Murali

For Respondent Nos.3 to 5 : Mr.D.Ramesh Kumar



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, made in M.C.O.P.No.68 of 2005, on the file of the Motor Accident Claims Tribunal – Additional Sub Judge, Thanjavur. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A Brief substance of the petition, in M.C.O.P.No.68 of 2005, is as follows:-

On 10.08.2004, at about 5.00 pm., when the petitioner was working in a construction field a lorry bearing Registration No.TN-25-2904 was driven by its driver in a negligent manner the ankle in the lorry caused fracture on the left hand of the petitioner. The driver of the lorry failed to stop the vehicle. The neighbours admitted the petitioner in the Hospital, she was admitted in Thanjavur Medical College Hospital. The petitioner sustained permanent disability and she claimed a sum of Rs.2,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No. 68 of 2005, is as follows:-



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The respondent is not liable to pay compensation, if the policy conditions are violated. The petitioner has to prove that the vehicle was insured with the second respondent and that the petitioner has to prove that the driver was having valid driving licence. The petitioner had only simple injuries. The petitioner has not sustained any permanent disability. The injuries are not due to the accident. The petitioner was admitted in the hospital only on 16.08.2004, that is after 7 days for the alleged occurrence. The petitioner sustained some injuries somewhere else, on the advise of others, she filed a case after a lapse of 73 days. The claim is excessive.

4. 3 witnesses were examined and 12 documents were marked on the side of the petitioner. 1 witness was examined and no document was marked on the side of the respondents. The Tribunal dismissed the claim petition.

5. Against the order, the claimant / appellant has filed this appeal on the following grounds:-

The Tribunal failed to consider that the claimant was actually injured and that the injury was caused by the lorry which hit the petitioner. The Tribunal failed to consider that the nature of injury reveals that it cannot be caused in any other way, except by way of an accident. The Tribunal failed to consider that the



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claimant was an illiterate lady she was unable to identify the vehicle immediately after the accident. The statement given before the Court was in a better pedestal, than the statement given at the hospital. The vehicle involved in the accident was not sent for the inspection by the motor vehicle inspector, as the Ankle of the lorry alone hit the petitioner. Mere delay in lodging the F.I.R cannot be a reason for rejecting the claim petition. The Tribunal failed to consider Ex.P1 and Ex.P2, which clearly reveals that the accident was genuine and that the claimant was injured on account of the hit by the lorry.

6. The appellant was working as a Mason helper, working in Shanmugam College (Now Shastra University), when she was standing near the compound wall, a lorry came in the reverse manner, hit her, the hook of the lorry hit the left hand of the appellant. The appellant was illiterate, she gave a statement, but, failed to mention that it was the lorry hook that hit her.

7. On the side of the appellant, it is stated that the complaint was given on 22.10.2001 , the respondent's vehicle was not involved in the accident. There is a delay of 74 days. The vehicle was not sent for Motor vehicle inspection. There is no possibility of getting the injury due to some other circumstances. Since the appellant was illiterate, she did not know whom to approach for



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compensation and that she gave a petition to the Collector and that is why there was a delay.

8. On the side of the first respondent, it is stated that no reason was stated in the petition for the delay of 74 days in lodging the F.I.R. The vehicle was not subjected to Motor vehicle inspection. The petitioner was admitted in the hospital, only after 6 days (ie.16.08.2004) from the alleged date of occurrence. P.W.1 has admitted that there was a delay in lodging the complaint. She has admitted that she was injured by an ankle. A.I.R copy was marked as Ex.P9, wherein, it was clearly mentioned that the claimant was injured only by an ankle. The delay of 74 days was not mentioned in the F.I.R, the concerned vehicle was not at all involved in the occurrence.

9. On the side of the respondents 2 to 4, it is stated that in the complaint given to the Collector, it was not mentioned that the claim was under the Motor Vehicle Act, it was mentioned only that the petitioner was injured by the hitting of an Ankle.

10. Ex.P1 was the complaint given by the appellant to the District Collector, Thanjavur. Ex.P2 was the copy of F.I.R. Ex.P6 was the Registration



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Certificate. Ex.P9 was the copy of the accident register. It is seen that the date of accident was mentioned as 10.08.2004. The claimant went for treatment only on 16.08.2004. In the accident information report, it was mentioned that the appellant sustained injury by an Angle. Subsequently, the appellant filed a petition before the Collector in Ex.P1, on 13.09.2004 mentioned that it was a lorry that hit her. So, the complaint was given after a lapse of 33 days. The complaint to the Collector was forwarded to the police and the F.I.R was registered on 13.09.2004. The vehicle was not sent for motor vehicle inspection.

11. R.W.1 has deposed that there was no such accident on the date and the vehicle was falsely implicated in the case. From the version of the appellant, it is seen that after hitting the appellant, the vehicle went away without stopping at the place of occurrence. It is stated that one Chandrasekaran was available at the place of occurrence he was not examined as a witness. The manner of accident narrated by the claimant in Ex.P9 and the manner of accident narrated by the claimant in Ex.P1 are contradictory. If at all the appellant has stated that she was hit by an Ankle in a lorry, the hospital authorities would have sent intimation to the police regarding a medico legal case.



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12. It is the duty of the appellant / claimant to prove that there was an accident and that the particular vehicle was involved in the accident. The reason for taking treatment after a lapse of 6 days and the reason for the delay in filing the complaint were not at all explained by the appellant. No eye witness was examined on the side of the appellant. For the above reasons, it is decided that the appellant failed to prove the manner of accident and the involvement of the vehicle mentioned in the petition.

13. For the reasons stated above, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed and the order of the Tribunal is hereby confirmed. No costs.

15.02.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

Ls

To

1.The Motor Accident Claims Tribunal –
Additional Sub Judge,
Thanjavur.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.1303 of 2009

15.02.2023