



C.M.A.No.1087 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.1087 of 2019

D. Anitha ... Appellant

Vs

1. N. Sakthivel
2. The Manager
M/s.Ramya Auto Accessories
No.15 Narmatha Street
K.K.Pudur
Coimbatore 641 038.

3. United India Insurance Co Ltd
Divisional Office: V 266 Kapila Towers
II Floor, Mettupalayam Road
Coimbatore.

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 10/8/2012 passed in M.C.O.P.No.51 of 2009 by the learned I Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.



C.M.A.No.1087 of 2019

For appellant	...	Mr.S.Swaminathan
For respondents	...	R.1 Dismissed - vide order dated 31/7/2024 No appearance for R.2 Ms.I.Malar for R.3.

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 10/8/2012 passed in M.C.O.P.No.51 of 2009 by the learned I Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

2. It is the case of the appellant that on 23/7/2008, at about 8.00 p.m., when she was travelling in a two wheeler bearing Registration No.TN-38-AB-1255 as a pillion rider near Thottipalayam extension junction, Avinashi road, Coimbatore, from west to east, dashed against the car which came in the opposite direction, appellant sustained grievous injuries. The appellant was treated as in-patient from 23/7/2008 to 30/7/2008. Despite treatment, she suffers permanent disability. Hence, filed a claim petition, seeking compensation of Rs.5,00,000/- with interest at the rate of 18% p.a., before the Motor Accidents Claims Tribunal and I Additional Subordinate Judge, Coimbatore.



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3. Before the Tribunal, during trial, in order to prove the case, the claimant has examined P.Ws.1 and 2 and marked Exs.P1 to P.6 and on the side of the Insurance Company, no witness was examined and no documents have been marked. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition.

4. Heard Mr.S.Swaminathan, learned counsel for the appellant and Ms.I.Malar, learned counsel for the third respondent. There is no appearance on behalf of the second respondent. Since the appellant had not taken any steps to serve notice on the first respondent, vide, order, dated 31/7/2024, this Court had dismissed the instant Civil Miscellaneous Appeal against the first respondent for non-prosecution.

5. The learned counsel appearing for the appellant submitted that the disability is permanent in nature and she suffers permanent disability. The appellant had incurred medical expenses to a sum of Rs,50,000/-.

6. The learned counsel for the third respondent/insurance company submitted that driver of Maruthi car came in a rash and negligent manner and



dashed not only against TVS XL super motorcycle bearing Registration No.TN-38-AB-1255 but also against Yamaha bike bearing Registration No.TN-28-J-2416. The driver of Yamaha bike also sustained injuries.

7. Perused the materials available on record.

8. On a cursory reading of the materials available on record, it could be deduced that in the cross-examination, P.W.1 admits that First Information Report is not registered as against the first respondent. Further, the Police have not identified the Maruthi car and its rider. The petitioner who has sustained injury through Maruthi car was in a helpless situation to identify the car which caused injury have chosen to make allegation as against the first respondent, and to get some remedy as compensation from the Insurance Company. Considering all the above, the Tribunal came to the conclusion that respondents 2 and 3 are not liable to pay any compensation to the appellant. Since the appellant had failed to prove that the accident had occurred due to the negligence of the first respondent, this Court is of the considered view that Tribunal had rightly come to the conclusion that there is no need to decide the quantum of compensation.



C.M.A.No.1087 of 2019

9. In view of the above, this Civil Miscellaneous Appeal is dismissed and the order dated 10/8/2012 passed by the learned I Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore is hereby confirmed. No costs.

11/11/2024

mvs.

Index : Yes / No

Neutral Citation: Yes/No

To

1. I Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

M.DHANDAPANI,J



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C.M.A.No.1087 of 2019

mvs.

C.M.A.No.1087 of 2019

11/11/2024