

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1860 of 2015

and

M.P.No.1 of 2015

The United India Insurance Co. Ltd.,
52, General Muthiah Mudali Street,
Chennai 600 079. ... Appellant/2nd Respondent

Vs

1.Minor Srijathi
(Minor Rep. By N.F. & Father Saravanan)

2.J.Heseemabi ... Respondents/Petitioner,1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 31.03.2008 in MCOP.No.1518 of 2004 on the file of the Motor Accidents Claims Tribunal (Fast Track Court) Namakkal.

For Appellant : Mr.T.Ravichandran

For Respondents: Mr.Ma.P.Thangavel (for R1)

JUDGMENT

The minor claimant was travelling in a Car bearing Registration No.TN21-E-4962 on 03.02.2004, at about 2.45 a.m. on the Athur Main Road and at that point of time, the lorry bearing Registration No.TN27-Y-7245, had been driven by its driver in a rash and negligent manner in the opposite direction and dashed against the car. As a result, she had sustained injuries. Hence, the claimant had claimed a sum of Rs.20,00,000/-.

2.The Insurance Company has filed a counter and resisted the claim. The respondent denied the occurrence of accident, nature of injuries and mode of treatment. Further, the respondent stated that the accident had been committed by the driver of the Car.

3.After recording the statements at both sides, the Tribunal had framed necessary issues and decided the case against the Insurance Company and granted common award. On the side of the claimant, 5 witnesses were examined and 20 documents were marked. On the side of the respondent, 1 witness was examined and 5 documents were marked.

4.After recording the evidence of both sides and on scrutiny of the documents marked by both parties, the Tribunal had granted a sum of Rs.4,27,563/- as compensation with interest at the rate of 7.5% per annum. Aggrieved by the said award, the Insurance Company has filed the above appeal.

5.The very competent counsel Mr.T.Ravichandran appearing for the appellant submits that the Tribunal had erroneously fastened the entire negligence on the part of the driver of the lorry. Actually, the accident had been committed by the driver of the car. However, the said accident was as a result of head on collision and therefore contributory negligence has to be attributed but the Tribunal had not considered the same. The very competent counsel further submits that the Tribunal had awarded compensation under the head of future loss and mental agony as a sum of Rs.2,00,000/- which is not appropriate. Further, the Tribunal had awarded a sum of Rs.1,00,000/- for removal of one kidney. In order to prove the same, the concerned Doctor was not examined. Hence, the very competent counsel entreats the Court to set aside the compensation and to scale down the compensation.

6.The highly competent counsel Mr.Ma.P.Thangavel, appearing for the claimant submits that the minor claimant aged about one year has sustained multiple injuries all over the body and her abdomen had been ruptured. Due to the severe injuries, one right kidney was removed from the minor girl. The same was certified by the medical practitioner, after scrutinising the entire medical records and also after taking of X'ray. However, the Tribunal had not granted adequate compensation to the minor claimant since an organ namely right side kidney was removed and

this is a permanent disability and the minor girl will be suffering throughout her life. Under the circumstances, the quantum of compensation is not on the higher side. Further, a criminal case had been levelled against the driver of the lorry for his rash and negligent driving. Therefore, the Tribunal had properly decided the relevant issues arising in the said case.

7. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court is of the view that the quantum of compensation is not on the higher side, since the minor girl, who is aged about one year has lost a kidney, which is a permanent disability. Due to loss of one kidney, she has suffered permanent loss of amenity and as such the minor girl has physically suffered permanently. Further, the Tribunal had not granted compensation under the head of attender charges and loss of amenities. Hence, the award is confirmed.

8. The learned counsel appearing for the appellant submits that the entire compensation amount had been deposited with interest. Now, the father of the minor or any guardian is at liberty to withdraw 50% of the deposited amount including interest thereon, after filing a memo, along with a copy of this order. This Court further directs the Motor Accidents Claims Tribunal (Fast Track Court), Namakkal to deposit the balance compensation amount, in the name of the minor claimant, in the nearest nationalised bank situated near the petitioner's residence, under the cumulative deposit scheme till such time, the minor attains the age of a major and hand over the fixed deposit certificate to the father or guardian of the minor claimant.

9. In the result, the above appeal is dismissed. Consequently, the order passed in M.C.O.P.No.1518 of 2004, on the file of the Motor Accidents Claims Tribunal (Fast Track Court) Namakkal, dated 31.03.2008, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal
(Fast Track Court),
Namakkal.

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.45551

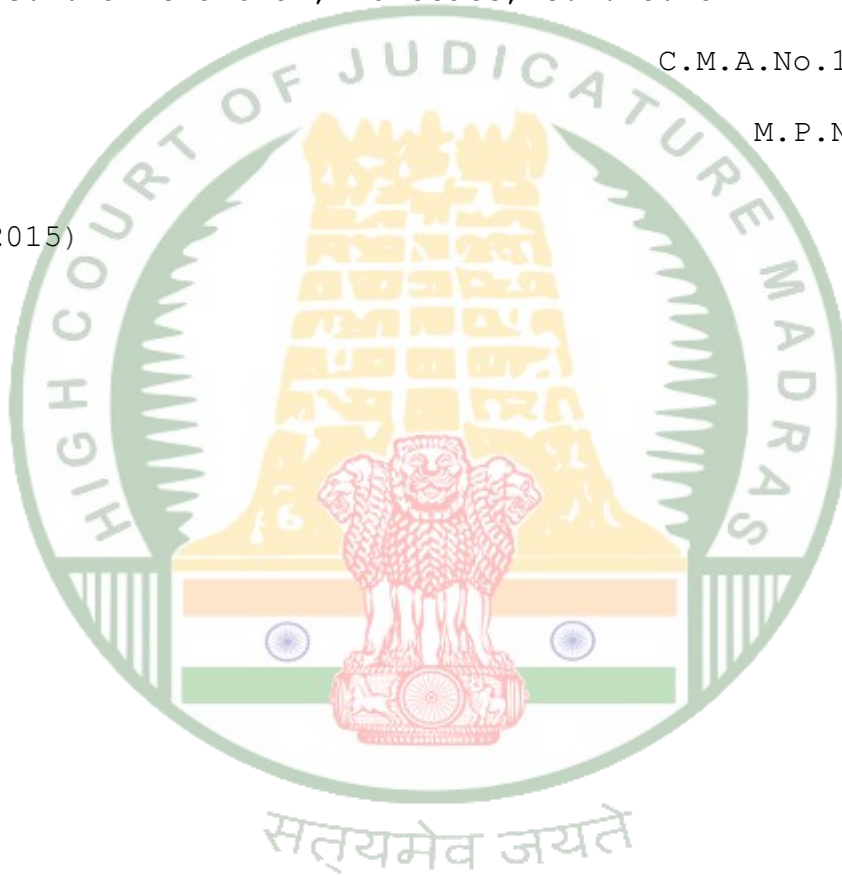
+1cc to M/s.T.Ravichandran, Advocate, S.R.No.45444

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and

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CA(04/11/2015)



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