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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Civil Miscellaneous Appeal No. 51 of 2006

The Oriental Insurance Company Ltd.,
Branch Office
Vellore.

...Appellant/2nd Respondent

-vs-

1. Sangeetha
D/o. Vasu
Kuppathamottur Village
Ammundi Post
Katpadi Taluk
Vellore District.

...1st Respondent/Claimant

2. R. Venkatesalu
No: 49 Chittoor Road
Thiruvallam Village & Post
Sugar Mills (via)
Katpadi Taluk
Vellore District.

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2004 passed in M.C.O.P. No. 87 of 2000 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vellore.

For appellant : Mr.J. Chandran

For 1st respondent : Mr. R. Margabandu

2nd respondent : Given up



J U D G E M E N T

The Oriental insurance Company is the appellant in the above appeal challenging the award and decree dated 22.11.2004 passed in M.C.O.P. No. 87 of 2000 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Vellore.

2. It is a case of an injury. The accident in this case happened on 12.1.1994. According to the injured claimant Sangeetha, on 12.01.1994, at about 12'o clock, when she was standing near her land at Kuppathamottu Village adjacent to the road of Tiruvalam - Pittithakku, the tempo van bearing registration No: TCJ 5122 running from Tiruvalam to Vellore from east to west, being driven very rashly and negligently on the extreme left side, dashed the petitioner on her back and ran over her right leg. In the said accident, the claimant's right leg above bottom was broken. The injured claimant was taken to CMC Hospital, Vellore, where she has undertaken treatment for six months as in-patient. According to the claimant, the accident had left her with 50% permanent disability and hence, she claimed a sum of Rs. 1,00,000/- as compensation from both the respondents, the 1st respondent being the owner of the tempo van and the 2nd respondent being the insurer of the said vehicle.

3. In support of the claim, the injured claimant had examined herself as P.W.1 and the Doctor as P.W.2. Exs.P-1 to P-5 were marked, the details of which are as follows:-

Ex.P-1 is the copy of FIR
Ex.P-2 is the accident register
Ex.P-3 is the copy of insurance policy
Ex.P-4 is the series of medical bills
Ex.P-5 is the disability certificate dt. 25.2.2004

4. One Ramesh was examined as R.W.1. Ex.R-1 - Investigation report was marked on the side of the appellant insurance company.

5. Before the Tribunal, the appellant insurance company took a stand that the accident had not occurred in the place and manner as alleged by the claimant and that the injury suffered by the claimant was due to the fact that she had poked her leg into a two wheeler. In support of such contention, the appellant had chosen to examine one Ramesh, Insurance Investigator as R.W.1 and his report is marked as Ex.R.1. However, in view of the fact that the driver of the tempo traveller had admitted his guilt of causing accident in C.C. No: 110



of 1994, the Tribunal came to the conclusion that the accident had in fact occurred as spoken to by P.W.1 - the claimant and proceeded to fix the compensation.

6. After discussing the oral and documentary evidence on record, the Tribunal accepted the claimant's contention that as a school going child, at the age of 14 years, after her school hours she was employed as a coolee and was earning a sum of Rs. 60/- to 70/- per day. The Tribunal also accepted the claim of the claimant towards her medical bills to the tune of Rs.13,301/- and granted the same. Further, by relying on the evidence of P.W.2 - the Doctor, the Tribunal came to the conclusion that the claimant had suffered 50% permanent disability in her right leg. Therefore, the Tribunal had granted a sum of Rs.50,000/- towards permanent disability. Further, towards pain

and suffering and nutrition, the Tribunal had granted a sum of Rs.5,000/- under each head. In all, the Tribunal granted the following amounts as compensation with 9% interest as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards permanent disability at 50%	Rs. 50,000/-
2	Medical expenses	Rs. 13,301/-
3	Towards Pain & Suffering	Rs. 5,000/-
4	Towards nutritious food	Rs. 5,000/-
	Total	Rs. 73,301/-

Since the claimant was a minor at that time, the Tribunal directed the respondents to deposit the entire award amount along with interest in a nationalised bank.

8. In appeal, the appellant contends that by an act of fraud with the collusion of the owner and driver of the vehicle, the claimant had filed the claim application and that the compensation granted for the disability is on the other side.

9. Though the appellant disputes the very accident and the consequential claim, the Tribunal had rightly pointed out that the driver of the tempo van had admitted his guilt of causing the accident in C.C. No: 110 of 1994 and hence, the question of rejecting the claim on that ground would not arise. Though even in the appeal, the appellant had taken a stand that by an act of fraud



and collusion between the owner and driver of the tempo van, the claim petition came to be filed, it had not chosen to bring to box any one of them to prove such a stand taken. In the absence of any material to come to a different conclusion, this Court is of the view that the claim of the claimant about the very accident cannot be brushed aside just like that.

10. Now coming to the amount of compensation awarded, a bare reading of the claim petition shows that the right leg above bottom of the claimant was broken and that she had undertaken treatment for more than six months as in-patient. P.W.2 Doctor had also certified that the injury caused had resulted in 50% disability. The oral evidence of the Doctor is to the effect that the bottom portion of the claimant's right leg and foot are looking ugly and that movement of the right leg is very limited. There are fractures in that leg. The claimant is unable to walk on her own and is walking in pain. For the aforesaid injury, the Tribunal had only granted a sum of Rs.50,000/- towards permanent disability with which there cannot be any dispute. The amount of Rs.13,301/- granted towards medical expenses is supported by medical bills and hence, it is also confirmed. Other than this, the Tribunal had just granted a sum of Rs.5,000/- each towards pain and suffering and nutritious food. While considering the amount granted under these two heads, we cannot forget the fact that the claimant, a female child, was just 14 years old at the time of accident and one can imagine the pain with which she has to carry herself for the rest of her life.

11. Considering all the aforesaid factors, I am of the view that the award passed by the Tribunal is just compensation and does not require any reduction or modification and accordingly, it is confirmed. There is no dispute with regard to interest granted by the Tribunal at 9% and the same is confirmed.

12. Finding no merits, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to the costs. The appellant is directed to deposit the award amount within a period of three months, if not already deposited. On such deposit the claimant is permitted to withdraw the entire award amount.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar



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To

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The Motor Accidents Claims Tribunal
Subordinate Judge
Vellore.

Copy to

The Section Officer,
V.R. Section,
High Court,
Madras.

1 CC to Mr. R. Margabandu, Advocate SR.No. 45228

1 CC to Mr.J. Chandran, Advocate SR.No. 45626

C.M.A. No: 51 of 2006

SV (CO)
PSI (12.10.2015)