

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.40 of 2016

&

CMP NOP.263 of 2016

The Oriental Insurance Company Limited
B.O.1069, West Madha Church Road
Appavoo Towers, 1st Floor, Royapuram
Chennai-13 ..Appellant/2nd Respondent

-Vs-

1. Lofiya Nadia Nancy ..1st Respondent/Petitioner
2. K.Saravanan ..Respondent/1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.7.2015 made in M.C.O.P.No.281 of 2010 passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II to deal with MCOP cases, Chennai.

For Appellant :: Mr.S.Manohar

JUDGMENT

This civil miscellaneous appeal is directed against the impugned award passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Chennai in M.C.O.P.No.281 of 2010 dated 27.7.2015, on the ground that the award of a total compensation of Rs.2,50,000/- over and above the claim of Rs.2,00,000/- without assigning any valid reason is wrong. According to the learned counsel for the appellant, when the driver of the mini lorry did not have a valid and effective driving licence to drive the vehicle and when both the driver as well as the owner of the vehicle were prosecuted for the offence of allowing an unauthorised person to drive the vehicle, the insurance company ought to have been exonerated from the liability. Adding further he submitted that the Tribunal, committing yet another wrong in holding that the claimant suffered a disability of 40% for the alleged injuries, further finding that the disability could be fixed only at 5% and 3%, again went wrong in fixing the disability at 15%. That shows that the Tribunal has not appreciated the principle that while assessing the disability, the whole body disability and functional disability ought to be assessed, which has not been done in this case. Hence the award of Rs.45,000/- for 15%

permanent disability at the rate of Rs.3,000/- per percentage of disability is wrong. Concluding his arguments, he submitted that when the first respondent/claimant, 17 years old girl studying 12th Standard, had only suffered crush injury at second toe of right foot along with Mpx-head of second toe, amputation of fourth toe, awarding a total compensation of Rs.2,50,000/- by the Tribunal, as against the claim of Rs.2,00,000/-, showing so much of mercy including the loss of marital prospects, is unsustainable.

2. But I am not able to agree with either of the submissions made by the learned counsel for the appellant insurance company. It is not in dispute that the claimant Miss.Lofiya Nadia Nancy, aged 17 years and studying 12th Standard, was merely walking on the P.V.Iyer road-Aacharappan road junction on the west to east direction on 11.9.2009 at about 4.40 p.m. When she was walking as a pedestrian to reach her home from the school, a van bearing Registration No.TN-01-3978, being driven by its driver in a high speed, came in the opposite direction and dashed against the first respondent/claimant and caused injuries, as a result the girl sustained grievous injuries, namely, crush injury on the right foot, Mpx head of second toe to fourth toe, amputation of fourth toe at the level of Mpx and bone exposed contamination. She was also admitted in the Government Stanley Hospital, Chennai on 11.9.2009 and was discharged only on 8.10.2009 after taking treatment. Therefore, having taken treatment as an in-patient from 11.9.2009 till 8.10.2009 after undergoing surgery and having taken treatment from the private hospitals subsequently, she made a claim before the Tribunal. The Tribunal also, properly appreciating the fact that a minor school going girl while returning back from the school to her home on the right side met with an accident due to the rash and negligent driving of the driver of the offending vehicle, finding that there was a negligence on the part of the driver of the offending vehicle bearing Registration No.TN-01-3978, held him responsible for the cause of the accident. In addition thereto the Tribunal, considering the certified copy of the final report filed by the Sub Inspector of Police, which was marked as Ex.R5, in which the police had charge-sheeted the driver of the van for the offence punishable under Section 338 of IPC and Sections 184, 185 and 3 read with Section 181 of the Motor Vehicles Act, again finding fault with the owner of the vehicle for allowing an unauthorised person to drive the vehicle in a drunken condition at the time of accident, clearly came to the conclusion that the owner is to be held liable for the wrong committed by his driver. On that basis, applying the principle of 'pay and recover', the appellant has been first directed to pay the award amount to the claimant and then recover the same from the owner without initiating any separate proceeding. The said finding of the Tribunal requires no interference.

3. However, with regard to the nature of injuries sustained by the claimant, the Tribunal had taken note of the discharge summary issued by the Government Stanley Hospital, which was marked as Ex.P3, diagnosing the following injuries:-

"1. Crush injury on right foot.

2. Fracture Mpx-Head of second toe
3. Amputation of fourth toe at the level of Mpx base"

In addition thereto, the Tribunal, considering the true copy of the entire medical records maintained by the hospital authorities through Ex.P6 series to substantiate the stand of the claimant, finally came to the conclusion that the injured claimant had proved her case that she sustained a fracture of medial proximal phalanx of second toe on the right leg and amputation of the fourth right toe at the level of medial phalanx due to the accident, which are admittedly grievous in nature as defined under Section 142 of the Motor Vehicles Act. Further the Tribunal, considering the nature of injuries sustained by the claimant and the evidence given by Dr.J.R.R.Thiyagarajan, P.W.3, rightly came to the conclusion that the claimant has suffered 15% partial permanent disability, for which a sum of Rs.45,000/- was awarded at the rate of Rs.3,000/- per percentage of disability. Therefore this Court is not able to see any infirmity thereon.

4. With regard to the award of compensation under the other heads, the Tribunal has come forward to fix the compensation in the following manner:-

Pain and sufferings	-	Rs.40,000/-
Transportation Charges	-	Rs. 5,000/-
Loss of Marital Prospects	-	Rs.50,000/-
Extra Nourishment	-	Rs. 5,000/-
Cost of Attender	-	Rs. 5,000/-
Continuing permanent disability-		Rs.50,000/-
Loss of amenities	-	Rs.50,000/-

This Court is not able to see any error in the award of compensation under the above heads as well on consideration of the facts and circumstances of the case. For all these reasons, this Court is not inclined to interfere with the impugned award of the Tribunal. Accordingly, the civil miscellaneous appeal fails and it is dismissed. As the statutory amount of Rs.25,000/- had been deposited, the appellant is hereby directed to deposit the entire balance amount of compensation together with interest to the credit of the M.C.O.P.No.281 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Chennai within a period of two weeks from the date of receipt of a copy of this order and thereafter it is open to the appellant to recover the same from the owner of the vehicle as ordered by the Tribunal. Consequently, C.M.P.No.263 of 2016 is also dismissed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
Special Subordinate Judge
No.II to deal with MCOP cases
Chennai.

+ 1 cc to Mr.S.Manohar, Advocate SR.2876

C.M.A.No.40 of 2016

RSI (CO)
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