IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3394 of 2014
& M.P.No.1 of 2014

The Branch Manager,
National Insurance Company Limited
No.6, W.P.Road, Karur. ... Appellant/2nd Respondent

Vs.

1. Minor Kausalya
(minor rep. by father Mani) ... Respondent/Petitioner

2. M.Selvakumar ... Respondent/1st Respondent

APPEAL filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.07.2014 made in M.C.O.P.No.1079 of 2011 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Court), Tiruppur.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.Ma.Pa.Thangavel - R1
No appearance - R2

J U D G M E N T
(Judgment of the Court was delivered by R.SUDHAKAR,J.)

National Insurance Company Limited is on appeal challenging the award dated 25.07.2014 made in M.C.O.P.No.1079 of 2011 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Court), Tiruppur.

2. It is a case of injury. On 03.09.2011, at about 16.15 hours, the injured minor Kausalya was trying to cross the road in the Kongu Main Road, MS Nagar, Tirupur, a lorry bearing Registration No.TN-34-7247 driven by its driver in a rash and negligent manner and hit against the injured Kausalya. As a result, the injured Kausalya sustained grievous injuries at the

right hand, right chest and injuries all over the body. Immediately, the injured Kausalya was taken to the Kumaran Hospital, Tirupur and CMCH, Kovai, in which she had undergone treatment for a period of two months. The injury sustained by the injured resulted in the amputation of right leg. Hence, the injured minor Kaulsalya claimed a compensation of Rs.15,00,000/-. According to the claimant, she was a student studying 3rd standard at the time of accident.

3. In support of the claim, the father of the injured was examined as P.W.1 and Dr.Dhanasekar, who treated the injured was examined as P.W.2 and Ex.P-1 to Ex.P-7 were marked, the details of which are as follows:-

Ex.No.	Details
P1	First Information Report
P2	Discharge Summary
P3	Out Patient slip
P4	Disability certificate
P5	X-ray
P6	Driving Licence of Karthick
P7	Photograph of the minor claimant

On behalf of the Insurance Company, Karthi, driver of the lorry was examined as R.W.1; One Gopalraj was examined as R.W.2 and one Suresh Kumar was examined as R.W.3 and Ex.R-1 to Ex.R-7 were marked, the details of which are as follows:-

Ex.No.	Details
R1	Voter ID of Karthi
R2	Letter of Regional Transport Officer
R3	MVI Report
R4	Copy of the Policy
P5	Office copy of the Notice
P6	Acknowledgement Card
P7	Acknowledgement Card

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. came to conclusion that the driver of the lorry had driven the vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimant. As per the evidence of R.W.2, since the driver of the lorry did not

possess valid driving licence to drive heavy vehicle involved in the accident, which is contrary to the terms of the policy, the Tribunal directed the insurance company to pay the compensation to the claimants and recover the same from the owner of the vehicle in a separate proceedings. As for the negligence issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal. However, learned counsel appearing for the appellant submits that the Tribunal has directed the appellant to recover the amount from the owner of the lorry in a separate proceedings. When the Tribunal found that the driver of the lorry did not possess any valid driving licence to drive heavy vehicle, which is contrary to the terms of the policy, the Tribunal ought to have permitted the appellant/Insurance Company to recover the compensation amount from the owner of the lorry.

5. We find some force in the argument of the learned counsel appearing for the appellant. Admittedly, the driver of the lorry did not possess any valid driving licence to drive the heavy vehicle, which is contrary to the terms of the policy. Even the driver himself, in his evidence admitted that he did not possess driving licence to drive heavy vehicle. It is his further evidence that the owner of the lorry has knowledge about the same. Hence, the appellant is entitled to recover the compensation amount paid by them to the claimant from the owner of the lorry.

6. As far as the quantum of compensation is concerned, based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 4,50,000/-
2	Attender Charges	Rs. 6,00,000/-
3	Loss of Marital life	Rs. 1,00,000/-
4	For Mental Agony	Rs. 1,00,000/-
5	For Pain and Suffering	Rs. 1,00,000/-
6	Loss of Comfort	Rs. 50,000/-
7	For Nutrition	Rs. 25,000/-
8	For Transport Expenses	Rs. 25,000/-
	Total	Rs.14,50,000/-

7. The objection raised by the learned counsel appearing for the appellant/Insurance company is that the loss of income arrived at by the Tribunal is on the higher side.

8. Insofar as the quantum of compensation is concerned, the Tribunal considering the age of the injured minor claimant and the disability sustained due to the accident, viz., the minor claimant has lost one eye and one hand, fixed the notional income of Rs.30,000/- per annum, which is just and reasonable. It is seen that considering the plight of the injured, who is minor, the Tribunal has awarded the above-mentioned compensation. We feel that the compensation granted by the Tribunal on all heads is fair and accordingly, the same is confirmed.

9. Accordingly, the compensation awarded by the Tribunal stands confirmed. However, the direction given by the Tribunal to the appellant/Insurance Company to recover the said compensation in a separate proceedings is set aside. The appellant/Insurance Company is permitted to pay the compensation to the claimant and recover the same from the owner of the lorry.

10. There is no serious objection in respect of the interest granted at 7.5% per annum.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal granting compensation to the tune of Rs.14.50 lakhs is confirmed.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) Learned counsel appearing for the appellant submits that as per the order passed by this Court dated 04.12.2014, directing the appellant to deposit the entire award amount, the appellant has deposited the same.

(iv) the father of the claimant is permitted to withdraw a sum of Rs.5.00 lakhs for the nutrition to be provided to the minor claimant.

(v) the balance amount shall be deposited in the name of the minor child in any one of the Nationalised bank initially for a period of three years under reinvestment scheme, which shall be renewed periodically till the minor attains majority.

(vi) the father of the minor claimant is permitted to withdraw the interest accrued on the minor's deposit once in three months directly from the bank.

(vi)Except the modification with regard to the recovery of compensation from the owner of the lorry, the award of the Tribunal in all other aspects stands confirmed.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sl

To

The Motor Accidents Claims Tribunal
Additional Subordinate Judge,
Tiruppur.

Copy To

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

+1cc to Ms.N.B.Surekha, Advocate, S.R.No.14751
+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.15174

C.M.A.No.3394 of 2014
and
M.P.No.1 of 2012

KSJ(CO)
CA(28/03/2016)