



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.709 of 2016

and

CMP(MD)No.7240 of 2016

The Branch Manager,
M/s.National Insurance Company Ltd.,
West Pradhakshanam Road,
Karur.

: Appellant/Respondent No.2

Vs.

1.Minor M.Moshika
rep by her father Mohanraj

: R1/Petitioner

2.P.Muthukumar

: R2/1st respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.07.2013 passed in M.C.O.P.No.199 of 2011 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Karur.

For Appellant	: M/s.P.Malini
For 1 st Respondent	: Mr.N.Sudhagar Nagaraj
For 2 nd Respondent	: No appearance

JUDGMENT

This appeal is preferred by the Insurance Company challenging the award of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Karur, made in MCOP No.199 of 2011, dated 17.07.2013.

2.The first respondent herein filed a petition claiming compensation of Rs.3,00,000/- for the injuries sustained in a motor vehicle accident occurred on 24.11.2011. The case of the claimant is that when she was travelling in a motor cycle bearing registration No.TN-47-Y-1702 along with his mother as pillion rider on Karur-Trichy Main road, the driver of the lorry bearing registration No.TN-41-Y-1099 came in rash and negligent manner, and crashed against the motor cycle. In the impact, she sustained grievous injuries and immediately she was taken to Karur



Government Hospital, where she took treatment as inpatient from 24.07.2011 to 28.07.2011.

3.The claim was opposed by the appellant Insurance Company contending that the driver of the lorry was not responsible for the accident and the claim is exorbitant and baseless.

4.In order to fortify the claim, on the side of the claimant, two witnesses were examined and 16 documents were marked. On the side of the appellant Insurance Company, no witness was examined and no document was marked. After analysing the oral and documentary evidence, the tribunal has award compensation of Rs.1,60,000/- with interest @ 7.5% p.a. Challenging the said award, the present appeal is filed.

5.PW1 is the eye witness and he has narrated the manner of the accident in his evidence. He produced Ex.P1 copy of the First Information Report, Ex.P3 rough sketch, Ex.P4 report of the Motor Vehicle Inspector, Exs.P5 and P6 copy of the charge sheet and judgment of the criminal court, which would reveal that the driver of the lorry was convicted and he paid the fine amount. Based on the evidence, the tribunal rightly held that the accident had occurred only due to the negligence of the driver of the lorry.

6.PW1 has further deposed that at the time of accident, the claimant was 3 year old and she has sustained fracture over her left forearm. PW2 Dr.Satheish has given evidence stating that the movement of the elbow of the claimant is restricted to 20% and issued a disability certificate Ex.P15 stating that she has suffered 30% permanent disability. The tribunal, after considering the oral and documentary evidence and Exs.P2, P15 and P16 awarded Rs.60,000/- towards permanent disability, by applying Rs.2,000/- per percent; Rs.15,000/- towards pain and sufferings; Rs.10,000/- towards extra nourishment; Rs.3000/- towards transport to hospital; Rs.22,000/- towards medical expenses and Rs.50,000/- towards future medical expenses. In total, the tribunal has awarded Rs.1,60,000/- with interest @ 7.5% p.a.

7.Ms.P.Malani, learned counsel for the appellant would submit that the tribunal without any basis has awarded Rs.1,60,000/- and it has to be reduced.

8.Mr.N.Sudhagar Nagaraj, learned counsel for the first respondent would submit that the injured is 3 year old and the award has passed, based on evidence, which does not require any interference by this court.

9.It is seen from the records that the claimant has suffered fracture over the left forearm and she had taken treatment as inpatient at Government Hospital, Karur for more than 5 days and subsequently, she was taking treatment as outpatient. Considering



the length of treatment and the injury, it would be proper to award Rs.30,000/- towards pain and sufferings instead of Rs.15,000/-as awarded by the tribunal. Likewise, the transportation charge is increased to Rs.8,000/- from Rs.3,000/-. Though, the claimant has given oral evidence stating that the claimant has to take treatment in future, no documentary evidence has been produced and the claim is not supported by medical evidence. So this court is of the opinion that the claimant is not entitled to future medical expenses. The award of the tribunal is modified as detailed below:-

1.For permanent disability	- Rs. 60,000/-
2.For pain and suffering	- Rs. 30,000/-
3.Extra nourishment	- Rs. 10,000/-
4.Transport to hospital	- Rs. 8,000/-
5.Medical Expenses	- Rs. 22,000/-
	=====
Total	Rs.1,30,000/-
	=====

10.In the result, this appeal is partly allowed. The claimant is entitled to Rs.1,30,000/- together with interest @ 7.5% p.a. from the date of petition till the date of realization. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. Since, the claimant is a minor, the award amount shall be deposited in a nationalised Bank as per the order of the tribunal. If any excess amount available, the appellant Insurance company is entitled to get refund of the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal/

The Principal Subordinate Judge, Karur.

+One cc to Mr.P.Malini, Advocate, SR.No.40616

+One cc to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.41289

er

RL/4C/3P/MR/SAR3/5.4.2017

Judgment made in

CMA(MD)No.709 of 2016