

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA.No.1446 of 2014

and MP.Nos.1 and 4 of 2014

and Cross Obj.No.57 of 2014

CMA.No.1446 of 2014

The New India Assurance Company Ltd.,
No.514 and 515 Gandhi Road,
Kancheepuram

.... Appellant

Vs.

1.Minor E.Gayathri

2.C.R.Sugumar

3.Magesh

R1 declared as major and discharged from
guardianship of V.S.Ekambaram vide
order of Court dated 12.11.2014 made in
MP.Nos.2 & 3 of 2014 in CMA.1446 of 2014.

... Respondents

PRAYER : Appeal filed under Section 173 of Motor Vehicles Act,
1988 against the judgment and decree dated 15.03.2013 made in
MCOP.No.523 of 2004 on the file of the Accident Claims Tribunal,
Subordinate Judge, Kancheepuram.

For appellant : Mr.M.Nirmal Kumar

For respondents: Mr.R.Neethe Perumal for R1.

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Cross Obj.No.57 of 2014
E.Gayathri

... cross objector

Vs.

1.The New India Assurance Company Ltd.,
No.514 and 515 Gandhi Road,
Kancheepuram.

2.C.R.Sugumar
3.Magesh

... Respondents

PRAYER : Cross Appeal is filed under Order 41 Rule 22 of CPC to enhance the compensation amount awarded in the judgment and decree dated 15.03.2013 made in MCOP.No.523 of 2004 on the file of the Accident Claims Tribunal, Subordinate Judge, Kancheepuram by allowing this cross appeal in CMA.No.1446 of 2014.

For cross objector: Mr.M.Nirmal Kumar.
For respondents : Mr.R.Neethe Perumal for R1.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is filed against the order dated 15.01.2013 made in MCOP.No.523 of 2004 on the file of the Accident Claims Tribunal, Subordinate Judge, Kancheepuram.

2. The case of the claimant before the trial Court that on 01.06.1999 at about 4.30pm when the petitioner was proceeding to Pondicherry from Kancheepuram in a Tata sumo car bearing Reg.No.TN21 J 9999 along with her mother, brother and other family members, near Thimmavaram Village, Modern Rice Mill, Chengalpattu Taluk at about 4.30pm, the tanker lorry bearing Reg.No.TDV 3727 (i.e, the 1st respondent) belongs to the 2nd respondent driven the vehicle in a rash and negligent manner and collided with the said Tata Sumo, thereby caused multiple grievous injuries to the claimant. The Chengalpattu Taluk Police registered a case in Cr.No.334 of 1999. The claimant was aged about 16 years and she was a student at the time of the accident and claims compensation to the tune of Rs.11,05,000/- and restricted her claim to Rs.10,00,000/-.

3. The case of the appellant/insurance company before the trial Court is that the owners of the vehicle bearing Registration Nos. TDV 3727 & TN-21 J 9999 i.e, the respondents 1 and 2 remains exparte. The accident held on 01.06.1999 at 4.30pm is unsustainable either in law or on facts,

the allegations contained in the claim petition are false and the claimant has not produced any documents for proof of age, loss of income and injuries sustained by her. The allegations stated in the petition are false and invented for the purpose of claiming compensation from the respondents. The claimant has received the compensation amount from this appellant and the same was not deducted by the claimant. At the time of accident, the first respondent is not having any valid licence and insurance policy and hence, the appellant is not liable to pay the compensation. The claimant without any calculation or any documentary proof claimed the compensation to the tune of Rs.10,00,000/- and the claim is purely imaginary, highly excessive, unsustainable and exorbitant one.

4. In order to prove the case of the claimant she examined four witnesses viz., PW1 to PW4 and marked Ex.1 to Ex.64 and the related documents to this case are Ex.62/wound certificate and Ex.63/medical bills. On the side of the respondent neither oral nor documentary evidence have been produced. Considering the oral and documentary evidence produced before the Tribunal. The Tribunal awarded a compensation of Rs.5,09,234/-. Aggrieved against the above said compensation, the 3rd respondent/insurance company filed the present appeal before this Court.

5. At the time of accident, the injured was minor and she was 16years old student, therefore her father filed the claim petition for and on behalf of his minor daughter. From the wound certificate, the Doctor has assessed the fracture and permanent disability of the injured, the same is recorded by the Tribunal which reads as follows :-

"In the accident, the petitioner suffered multiple fracture and permanent disability like
1)Head injury 2)Fracture of the left clavicle
3)Fracture of the left 2nd rib 4)Fracture of the right 8th rib 5)Fracture of sternum with superior mediastinal collection of Hematoma 6) Undisplaced scapular neck fracture. Even though the injured petitioner has sustained grievous injuries, and she took treatment at Apollo Hospital, she has not examined any Doctor who treated her since she is working at New Delhi."

6. According to the claimant, the injured sustained grievous injuries of 80% and there is no proof to show that she sustained 80% injury and arrived at 30% permanent disability and allowed the compensation of Rs.2,000/- per percentage (2000 x 30 = Rs.60,000) and Ex.P63 relating to medical bills series to the tune of Rs.46,234/- and awarded Rs.2000/- for transportation expenses and Rs.1000/- towards damages and clothes. Under the

head of pain and sufferings the Tribunal has awarded a sum of Rs.1,00,000/- and Rs.3,00,000/- for loss of expectation of life. Considering all the above aspects, the Tribunal has awarded a total compensation of Rs.5,09,234/- together with interest at 7.5%p.a. from the date of petition till the date of payment. The compensation awarded by the Tribunal is not just and fair and there is no valid ground to reduce the award passed by the Tribunal. Actually the claimants claimed compensation to the tune of Rs.10,00,000/-, but the Tribunal awarded only a sum of Rs.5,09,234/-, the same is very low. Hence, the claimant has filed cross objection.

7. The learned counsel for the appellant/insurance company would submit that the award passed by the Tribunal is on higher side and attempted to say that in the medical records there is no mention about the percentage of disability and the Tribunal falsely fixed 30% for permanent functional disability, the same is on higher side. Therefore, the insurance company has filed the present appeal for reducing the compensation.

8. On perusal of the records, oral and documentary evidences produced by the claimant before the Tribunal and the Award passed by the Tribunal, there is no dispute with reference to the extent of injuries sustained by the minor girl and no dispute with regard to the treatment taken by the claimant and the only dispute is quantum of compensation awarded without any medical records, the Tribunal has calculated 30% permanent functional disability and awarded Rs.2,000/- per percentage. The appellant/insurance company has not examined any witnesses to show that the injuries sustained by the injured is false and disproved the fact of disability. The only contention raised by the counsel for the appellant is that in the medical records, nowhere the percentage of disability has been mentioned. The Tribunal has fixed 30% disability, as already stated that the injuries sustained by the injured and also the medical records produced before the Court by the claimant has not been disproved by the appellant/insurance company by producing contra evidence. Insofar as the expectation of life, at the time of accident, the age of the injured is 16years and considering the nature of injuries and age of the victim the award passed by the Tribunal is not on higher side. In the light of the above discussion, we are of the view that the award passed by the Tribunal is just and reasonable.

9. In the light of the above discussion, there is no valid reason to interfere with the quantum of compensation awarded by the Tribunal and the appeal filed by the insurance company is liable to be dismissed.

10. In the result, the Civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed. In view of the judgment passed in CMA.No.1446 of 2014, the cross objection filed by the claimant in Cross Obj.No.57 of 2014 is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh

To

THE ACCIDENT CLAIMS TRIBUNAL,
SUBORDINATE JUDGE, KANCHEEPURAM.

Copy to

THE SECTION OFFICER,
V.R. SECTION, HIGH COURT, MADRAS.

+2cc to Mr.M.Nirmal kumar Advocate, S.R.No. 61773
+1cc to Mr.R.Neethi perumal Advocate, S.R.No. 61370

CMA.No.1446 of 2014
and Cross Obj.No.57 of 2014

TR(23/11/2017)

सत्यमेव जयते

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