IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

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THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.1823 of 2017
and
C.M.P. No.9745 of 2017

ICICI Lombard General Insurance Co.Ltd.,
Chottabhai Centre,
2nd Floor,
No.140, Nungambakkam High Road,
Chennai - 600 034. ... Appellant/2nd Respondent

Vs

1.Minor Shafreen Banu
Minor represented by her father/
N.F.Kaja Mohideen

2.Mahendran ... Respondents/Petitioners & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.07.2016 in M.C.O.P.No.125 of 2014 on the file of Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.A.Abdhul Kani

JUDGMENT

This appeal has been filed by the insurance company, challenging the quantum of compensation, awarded to the injured claimant.

2. Shafreen Banu, aged about two years (represented by her father), met with an accident while travelling in the auto bearing Registration No.TN 22 BL 0498 as a passenger from Pallavaram to Tambaram along with her mother. Because of injuries sustained, she suffered amputation in the left foot. She was admitted at Stanley Hospital on 14.11.2013 and continued

as inpatient continued till the petition was filed before the claims Tribunal. The claimant, claiming a sum of Rs.15,00,000/- has filed this claim petition. The Tribunal, on consideration of materials placed has awarded a sum of Rs.12,04,000/- as compensation.

3. The Tribunal has taken note of the following aspects while awarding the compensation.

3.1 The Tribunal has relied upon the decision reported in 1995 - 1SCC 551, in which Judgment of 1965 1 AIR ER 563 has been relied upon. The very important observation has been taken by the Tribunal which reads as under :

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (I) medical attendance; (ii) loss of earning of profit up to the date of trial (iii) other material loss. So far non-pecuniary damages are concerned, they may include (I) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience hardship, discomfort, disappointment, frustration and mental stress in life". In the same case, the Court further observed: " In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

3.2 The Tribunal has relied upon Govind Yadav Vs. New India Insurance Co. Ltd., 2011 (2) TN MAC 661 (SC) 2012 ACJ 28 (SC).

3.3 So far as the claim relating to transportation, nourishing food, damages to clothes and articles etc. are concerned the Tribunal has relied upon the evidence of father. She was taken for treatment as in-patient from 14.11.2013 to 05.12.2013 and the amputation has been done on 16.11.2013. Plastic surgery was held on 28.11.2013. Further treatment has continued in the capacity as out patient. Considering the requirement of artificial foot in future (Jaipur Limb), Rs.50,000/- has been awarded. The Tribunal has fixed the disablement at 55%, though the Doctor has fixed at 75%. Taking the monthly income at Rs.12,000/-, adopting multiplier of 15 in respect of 55% of the disability, the loss of earning capacity has been assessed.

3.4 Pain and suffering is concerned, the decision reported in 2013 (1) TNMAC 812 is relied upon towards the award of compensation; the decision reported in 2003 ACJ 1775 SC is relied upon.

3.5 The following are the breakup details of the award :

1. Transportation, Nourishing Food and and miscellaneous expenditure	:	Rs. 50,000/-
2. Medical Expenses	:	Rs. 20,000/-
3. Future Medical expenses	:	Rs. 50,000/-
4. Attender charges	:	Rs. 20,000/-
5. Disability	:	Rs. 8,64,000/-
6. Damages for pain, suffering and Trauma	:	Rs. 50,000/-
7. Loss of amenties	:	Rs. 50,000/-
8. Loss of marriage prospects	:	Rs. 1,00,000/-
Total		Rs.12,04,000/-

4. A perusal of the award, under each and every heads would show that the compensation awarded on each head is based on settled legal principles and award passed in comparable cases and the appeal has no merits.

5. In view of the above, the appeal stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

6. The Insurance Company is directed to deposit the award amount, (as confirmed in this appeal), less the amount already deposited, with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP No.125 of 2014 within

a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the guardian is permitted to withdraw a sum of Rs.2,00,000/- towards reimbursement of treatment expenses.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   II Judge, Court of Small Causes,
   Chennai.

2. The Section Officer,
   V.R. Section,
   High Court, Madras - 104.

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.47183
+1cc to Mr.A.Abdhul Kani, Advocate, S.R.No.46849

C.M.A.No.1823 of 2017

LRS(CO)
CA(10/08/2017)