

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.620 of 2017
and C.M.P.No.3604 of 2017

The National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office, Madha Complex,
C.N.A.Road, Vaniyampadi Town & Taluk,
Vellore District.

... Appellant/2nd
respondent

versus

1. Minor Tamilarasan
Rep. by his mother Malliga

... 1st respondent /
Petitioner

2. M.Senthil Kumar

... 2nd respondent /
1st respondent

(R2 was set ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 29.04.2009 made in M.A.C.T.O.P.No.117 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District & Sessions Court, Fast Track Court, Thirupathur, Vellore District.

For Appellant : Mr.S.Vadivel
For R1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the order dated 29.04.2009 made in M.A.C.T.O.P.No.117 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District Sessions Court, Fast Track Court, Thirupathur, Vellore District.

2. On 08.11.2004, while the claimant minor Tamilarasan along with his parents, was travelling in the auto bearing Reg.No.TN-23-C-1076, belonging to the 2nd respondent herein, which was insured with the appellant herein, towards Tiruppatur-Sagadevan Kollakkattay, the accident occurred due to the rash and negligent driving by the driver of the auto, due to which,

the minor sustained injuries. Hence, the minor claimant, through his mother, filed a claim petition claiming compensation of Rs.4,00,000/-.

3. The Tribunal after considering the oral and documentary evidence, has awarded a sum of Rs.85,000/- as compensation, the break up details of which read as under:

Disability	-	Rs.	40,000/-
Medical Expenses	-	Rs.	10,000/-
Attendant charges	-	Rs.	5,000/-
Extra nourishment	-	Rs.	1,200/-
Medical Bills	-	Rs.	3,800/-
Pain and sufferings	-	Rs.	25,000/-

Total	-	Rs.	85,000/-

Challenging the finding relating to the involvement of the alleged vehicle as well as the quantum of compensation, the Insurance Company has filed the present appeal.

4. The learned counsel appearing for the appellant submitted that as the driver cum owner of the vehicle was not having a valid driving licence at the time of accident, the Insurance Company is not liable to pay compensation. It is further submitted that as the petitioner has not suffered any grievous injuries, the compensation awarded by the Tribunal is very excessive. Therefore, the same has to be reduced.

5. A perusal of the award passed by the Tribunal reveals that the mother of the injured claimant examined herself as P.W.1, wherein, she deposed that the auto was driven by its owner, which stands corroborated by Ex.P1-First Information Report. A case has also been registered against the owner of the vehicle. On the side of the claimant, Ex.P-5 was marked to prove that the driver was having a valid driving licence. A perusal of Ex.R-2 reveals about the registration certificate of the vehicle and permits issued. Ex.P-4 is the Insurance Policy. Considering the evidence of P.W.1 and also the documents on record, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver and as the vehicle was insured with the Insurance Company, the Insurance Company is liable to pay compensation. Though it is the contention of the learned counsel for the appellant that the driver of the auto was not in possession of a valid driving licence, however, the materials available on record reveal that the contention is devoid of merits. The driving licence of the auto has been marked, which has been taken into consideration by the Tribunal to come to the

conclusion that there was no violation of the policy conditions. In such circumstances, this Court is of the considered view that the insurance company is liable to compensate the claimant and the finding to that effect, rendered by the Tribunal, is justified and warrants no interference.

6. Insofar as the quantum of compensation is concerned, the materials available on record reveals that the claimant has sustained fracture of bones below the left knee, due to which, he was suffering from excruciating pain. The Doctor, P.W.2, who examined on the side of the claimant, has assessed the disability at 40%.

7. Considering the age of the claimant, nature of injuries and also considering the evidence of P.W.2, the Tribunal has fixed the disability at 40% and adopting percentage method, has awarded a sum of Rs.40,000/- at Rs.1000/= per percentage towards disability. The Tribunal has also awarded a sum of Rs.10,000/- towards medical expenses, Rs.5,000/- towards cost of attendant, Rs.1,200/- towards extra nourishment, Rs.3,800/- towards medical bills and Rs.25,000/- towards pain and sufferings, totalling Rs.85,000/-

8. Though it is the contention of the learned counsel for the appellant that the compensation awarded by the Tribunal is on the higher side, however, it is to be pointed out that the compensation on all the heads are very meagre and cannot be said to be excessive. Further, it is to be remembered that the claimant was a minor boy, who would have been looking forward to a healthy life, both physically and mentally, which was, however, shattered by the accident leading to disablement. The pain and mental agony that the claimant would have faced after the accident cannot be expressed in words. In such view of the matter, this Court is of the considered view that the amount awarded at Rs.1,000/- per percentage of disability cannot be said to be excessive. The Tribunal has taken into consideration the entire evidence available on record and has given compensation, more conservatively, which does not call for any interference.

9. The compensation awarded by the Tribunal is only a sum of Rs.85,000/-, which does not appear to be excessive even in the year 2004. The compensation awarded is hardly adequate in the face of spiraling inflation and surge in cost of living. Inflation is naturally compounding, and is a relentless destroyer of the value of money. The same is supported by the decision of the Hon'ble Supreme Court in the case of Rathi Menon v. Union of India 2001 (2) KLT 12: (2001 AIR SCW 1074), wherein the Supreme Court, considering the value of money etc., held that compensation shall be payable on the basis of rules

prevailing at the time of making the final order for payment of compensation and not on the money value which prevailed on the date of accident. Even though the accident had happened in the year 2004, the amount awarded towards compensation is only Rs.85,000/-. Therefore, by no stretch of imagination, could the said sum be said to be excessive. Therefore, the compensation deserves to be confirmed.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 29.04.2009 made in M.A.C.T.O.P.No.117 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District Sessions Court, Fast Track Court, Thirupathur, Vellore District. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant/insurance company is directed to deposit the award amount along with interests and costs as quantified by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. The claimant would have attained majority by now. Therefore, on deposit being made by the appellant/insurance company, the Tribunal is directed to transfer the amount directly to the bank account of the claimant, on production of proof of the claimant attaining majority, through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal-cum-
Addl. District & Sessions Judge,
Addl. District & Sessions Court,
Fast Track Court,
Tirupathur, Vellore District.
2. The Section Officer,
Vernacular Records, High Court,
Madras-104 (2 copies)

C.M.A.No.620 of 2017

rsk(co)

cs/14/06/18