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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:14.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.(MD)No.199 of 2017

and

C.M.P(MD)No.2400 of 2017

National Insurance Co., Ltd.,
Rep. By its Branch Manager,
Kumbakonam.

...Appellant/Respondent No.2

Vs.

1.Minor Abi @ Vigneswaran
Rep. By mother & next friend
Tmt.Usha
No.120 Main Road,
Manambadi Village,
Thanjavur District.

...1st Respondent/Petitioner

2.S.Chandrasekar

...2nd Respondent/Respondent-1

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the fair and decretal order, dated 01.04.2015 made in M.C.O.P.No.155 of 2014, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur at Kumbakonam.

For Appellant

: Mrs.K.R.Shiva Shankari

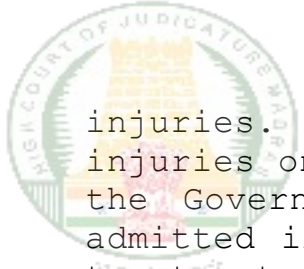
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award, dated 01.04.2015 made in M.C.O.P.No.155 of 2014 passed by the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Thanjavur at Kumbakonam.

2.The appellant-Insurance Company is the second respondent, first respondent is the claimant and the second respondent is owner of the vehicle in M.C.O.P.No.155 of 2014. The first respondent/Claimant, who is the minor, filed a claim petition in M.C.O.P.No.155 of 2014 represented by his mother claiming a sum of Rs.3,00,000/- as compensation, for the injuries sustained by him, in the accident that occurred on 18.03.2013.

Facts of the Case:

3. According to the first respondent/claimant, on 18.03.2013 at about 06.30 p.m., while he was walking on the right side of the road, the TVS Sports Vehicle bearing Registration No.TN-50-U-8142 was driven by the driver of the second respondent in a rash and negligent manner and hit against the first respondent and caused



injuries. Due to that, the first respondent/claimant sustained injuries on the face and lost his three Teeth. He was admitted in the Government Hospital at Kumbakonam and subsequently, he was admitted in the Thanjavur Medical College Hospital and was taking treatment from 18.03.2013 to 29.03.2013 as In-patient. According to the first respondent/claimant, the accident took place only due to rash and negligent driving of the driver of the second respondent and the said vehicle was insured with the appellant's Insurance Company. Therefore, both second respondent and appellant are liable to pay compensation.

4.The second respondent remained ex-parte before the Tribunal.

5.The appellant contended that the driver of the vehicle drove the vehicle carefully and at that time, the first respondent/claimant suddenly crossed the road and due to the negligent of the first respondent, the accident occurred. Therefore, the appellant is not liable to pay any compensation.

6.Before the Tribunal, the mother of the first respondent was examined as P.W.1 and one Dr.Rajeshkumar was examined as P.W.2 and marked 15 documents as Exs.P1 to P.15. The appellant/Insurance Company did not let in any oral and documentary evidence.

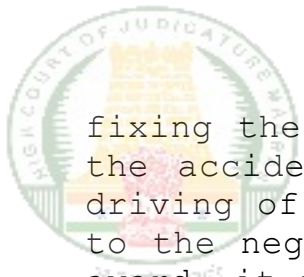
7.The Tribunal considering the pleadings, oral and documentary evidence and arguments of the counsel for the parties and taking into consideration of the evidence of P.W.2 and Exhibits marked, awarded a sum of Rs.1,99,550/- as compensation.

8.Aggrieved against the said award, dated 01.04.2015, the appellant/Insurance Company has filed this present Civil Miscellaneous Appeal.

9.The contention of the learned counsel for the appellant that the Tribunal erred in awarding a compensation of Rs.40,000/- for the disability of 40% as well as a sum Rs.10,000/- for the injuries and it is a double compensation and compensation awarded by the Tribunal in the other heads also are excessive, is untenable. In the accident, the first respondent/claimant lost three teeth. The Tribunal examined the first respondent in the Court and found that due to the loss of teeth, the face of the first respondent is disfigured. In the circumstances, the Tribunal has rightly awarded a sum of Rs.50,000/- for fixation of artificial Teeth. In view of the loss of teeth, the Tribunal awarded a sum of Rs.50,000/- for loss of future happiness and future prospects. The Tribunal has given reason for awarding compensation for various heads and compensation with regard to percentage of disability and other medical expenses are based on the evidence of Doctor, who was examined as P.W.2.

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10.The appellant has not let in any evidence to disprove the percentage of disability, nature of the injury and expenses for



fixing the artificial teeth and let in any evidence to prove that the accident did not takes place only due to rash and negligent driving of the driver of the appellant, but it took place only due to the negligence of the first respondent. A reading of the whole award, it reveals that the Tribunal awarded just compensation.

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11. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed.

(i) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.155 of 2014, on the file of the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Thanjavur at Kumbakonam, within a period of **eight weeks** from the date of receipt of a copy of this judgment.

(ii) On such deposit, the Tribunal shall deposit the entire amount in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and thereafter renewable, till the minor attains majority. The mother of the first respondent/claimant is permitted to withdraw the accrued interest once in three months directly from the bank.

(iii) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected C.M.P(MD)No.2400 of 2017 is dismissed.

Sd/-

Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar

To

1. Chief Judicial Magistrate,
The Motor Accident Claims Tribunal
Thanjavur at Kumbakonam.

2. The Section officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate, SR.14961

CMA. (MD) No.199 of 2017
14.03.2017