



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A. (MD) No.1330 of 2016

and

C.M.P (MD) Nos.11250 of 2016 and 799 of 2017

The National Insurance Co. Ltd.,
No.7-C, S.N.High Road,
Tirunelveli - 627 001.
represented by its
Branch Manager.

... Appellant/2nd Respondent

Vs.

1.Minor Sharpana
represented by her
father and guardian,
Atham

... 1st Respondent/ Petitioner

2.P.S.Shahul Hameed

... 2nd Respondent/ 1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 02.09.2015 made in M.C.O.P.No.292 of 2011 by the Motor Accident Claims Tribunal, Tirunelveli.

For Appellants : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

For Respondents : Mr.A.Arumugam for R.1
R.2 - Left.

* * * * *

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award of Rs.4,36,850/- (Rupees Four Lakhs Thirty Six Thousand Eight Hundred and Fifty only) for the injuries sustained by the first respondent/claimant, aged 7 years, a student, in the accident occurred on 21.08.2010, when the first respondent/claimant was walking with her father along Nethaji Road near Melapalayam Nagoor Meeran Andavar Mosque, a motorcycle bearing Registration No.TN-72-AA-6826 belonging to the second respondent insured with the appellant-Insurance Company was driven by its rider in a rash and negligent manner and dashed against the first respondent/claimant, due to which, she sustained



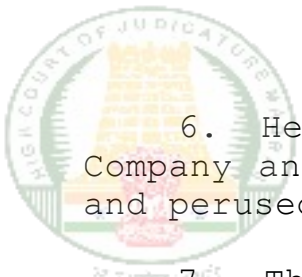
grievous injuries and she was admitted in the hospital on 21.08.2010 and she was taking treatment as inpatient from 21.08.2010 till 15.09.2010. At the time of the accident, the first respondent/claimant was aged 7 years and because of the injuries, the first respondent/claimant found it very difficult to concentrate on her studies. Therefore, the claim petition was filed.

2. The second respondent/owner of the vehicle remained exparte before the Tribunal.

3. The appellant-Insurance Company filed the counter statement denying all the averments in the claim petition and submitted that the rider of the two wheeler was not having a valid driving licence and that the accident did not occur due to the rash and negligent riding of the rider of the two wheeler and that the first respondent/claimant suddenly crossed the road and therefore, the accident occurred only due to the negligence on the part of the first respondent/claimant. The appellant-Insurance Company further denied that the first respondent suffered multiple injuries and contended that it is for the first respondent/claimant to prove the same and that if the Tribunal comes to the conclusion that the second respondent is responsible for the accident, the second respondent should be directed to pay the compensation as the rider of the two wheeler has no valid driving licence and further that the amount claimed by the first respondent/claimant is excessive.

4. Before the Tribunal, the father of the first respondent/claimant was examined as P.W.1 and P.W.2 and P.W.3 - Doctor, who issued the disability certificate, were examined and Exs.P.1 to P.13 were marked. On the side of the appellant-Insurance Company, R.W.1 and R.W.2 were examined and Exs.R.1 to R.6 were marked. Ex.X.1 was also marked. On behalf of the second respondent/owner of the vehicle, no oral and documentary evidence was let in.

5. On contest, the Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the second respondent is responsible for the accident as the rider of the two wheeler was rash and negligent and held that since the appellant-Insurance Company is the insurer of the offending vehicle, the appellant-Insurance Company is liable to pay the compensation for the injuries sustained by the first respondent/claimant and taking into consideration the fact that the first respondent/claimant suffered 36% partial and permanent disability, awarded a sum of Rs.4,00,000/- (Rupees Four Lakhs only) and also awarded the compensation under the other heads and totally, a sum of Rs.4,36,850/- (Rupees Four Lakhs Thirty Six Thousand Eight Hundred and Fifty only) was awarded by the Tribunal. Aggrieved over the same, the appellant-Insurance Company filed the present appeal.



6. Heard the learned Counsel for the appellant-Insurance Company and the learned Counsel for the first respondent/claimant and perused the materials available on record.

7. The second respondent/owner of the offending vehicle remained *exparte* before the Tribunal and hence, notice to the second respondent is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in ***Mrs. Jamunabai v. Chhote Singh*** reported in ***I (2004) ACC 190 (FB)***.

8. The Tribunal, based on the evidence of P.W.1 and filing of a criminal case against the rider of the two wheeler, rightly found that the rider of the motorcycle was rash and negligent while riding the motorcycle and caused the accident and fastened the liability on the appellant-Insurance Company. The said finding of the Tribunal regarding negligence cannot be interfered with.

9. It is seen that in the accident, the first respondent/claimant sustained partial permanent disability at 36% as per the evidence of P.W.3 - Doctor and the Tribunal awarded a sum of Rs.4,00,000/- (Rupees Four Lakhs only) towards 36% disability and in the opinion of this Court, the said determination of compensation under the head 'partial permanent disability' is excessive and therefore, the same is set aside.

10. In the case on hand, the accident occurred on 21.08.2011 and taking into consideration the date of the accident, this Court is of the view that a sum of Rs.3,000/- (Rupees Three Thousand only) should be awarded towards 1% disability and accordingly, this Court awards a sum of **Rs.1,08,000/-** (Rupees One Lakh and Eight Thousand only) towards 36% partial permanent disability [Rs.3,000/- X 36%].

11. Further, P.W.3 - Doctor, deposed that due to the injuries sustained by the first respondent/claimant on the head, she suffered giddiness and loss of memory and she found it very difficult to sit for sometime and the movement of the right leg also got reduced. Taking into consideration the evidence of P.W.3 - Doctor and the age of the first respondent/claimant, this Court is inclined to enhance the compensation awarded by the Tribunal under the other heads.

12. Accordingly, a sum of Rs.3,000/- (Rupees Three Thousand only) awarded towards Extra Nourishment is enhanced to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only).

13. Similarly, a sum of Rs.3,000/- (Rupees Three Thousand only) awarded towards Attendant's Charges is enhanced to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only).



14. The Tribunal awarded only a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and sufferings for 36% partial permanent disability sustained by the first respondent/claimant and hence, the same is enhanced to a sum of **Rs.1,50,000/-** (Rupees One Lakh and Fifty Thousand only).

15. The amounts awarded under the other heads, viz., a sum of **Rs.3,000/-** (Rupees Three Thousand only) towards transportation charges and a sum of **Rs.2,850/-** (Rupees Two Thousand Eight Hundred and Fifty only) towards medical expenses, are reasonable and they are confirmed.

16. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

17. Accordingly, the first respondent/claimant is entitled to a sum of **Rs.3,13,850/-** (Rupees Three Lakhs Thirteen Thousand Eight Hundred and Fifty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

18. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.4,36,850/- (Rupees Four Lakhs Thirty Six Thousand Eight Hundred and Fifty only) to **Rs.3,13,850/-** (Rupees Three Lakhs Thirteen Thousand Eight Hundred and Fifty only).

(ii) The first respondent/claimant is entitled to **Rs.3,13,850/-** (Rupees Three Lakhs Thirteen Thousand Eight Hundred and Fifty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) The first respondent/claimant is directed to submit the details of her Savings Bank Account along with the copy of her passbook to the Tribunal **forthwith**;

(iv) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.292 of 2011 on the file of the Motor Accident Claims Tribunal - cum - Additional Sub Court, Tirunelveli, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(v) On such deposit, the Tribunal is directed to deposit the same in Fixed Deposit under the renewable scheme till she attains majority and the guardian of the first respondent/claimant is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor first respondent/claimant.

(vi) In the facts and circumstances of the case, there shall



be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Tirunelveli.

+1cc to Mr.S.Srinivasa Raghavan, Advocate, Sr.15907

+1cc to Mr.A.Arumugam, Advocate, SR.16040

C.M.A. (MD) No.1330 of 2016

and

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