

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2518 of 2011

M/s.Royal Sundaram Alliance
Insurance Company Limited
Represented by its Manager
No.45 & 46, Whites Road,
Chennai

... Appellant/2nd Respondent

...Vs...

1. Minor S.Deenu Prasad ... 1st Respondent/Petitioner
Rep. by Father Shiva Moorthy

2. Vijayalakshmi ... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2011 made in M.C.O.P.No.457 of 2009 on the file of the Motor accident Claims Tribunal (Principal Subordinate Judge) at Krishnagiri.

For Appellant : Mrs.R.Srividhya

For Respondents : Mr.Mukund R.Pandian, for R1
R2 - Ex-parte

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Principal Subordinate Judge, Krishnagiri) in M.C.O.P.No.457 of 2009 under its Award dated 11.03.2011.

The brief facts leading to the filing of the instant appeal are as follows:-

2. The first respondent sustained grievous injuries as a result of an accident that took place on 02.10.2008 caused by a lorry bearing registration No.KA 01-AA-3549 owned by the second respondent and insured with the appellant. The first respondent, who was aged 10 years at the time of accident, represented by his father and natural guardian preferred a claim before the

Motor Accident Claims Tribunal in M.C.O.P.No. 457 of 2009 seeking a compensation of Rs.24,62,500/- for the injuries sustained by him as a result of the accident. The Motor Accident Claim Tribunal by its Award dated 11.03.2011 in M.C.O.P.No.457 of 2009 directed the appellant to pay the first respondent a sum of Rs.7,66,200/- together with interest at the rate of 9% per annum from the date of claim till the date of realization.

3. Aggrieved by the quantum of compensation awarded by the Tribunal under its Award dated 11.03.2011, the instant appeal has been filed by the insurance company.

4. Heard Mrs.R.Srividhya, learned counsel for the Appellant Insurance Company and Mr.Mukund R.Pandian, learned counsel for the first respondent.

5. According to the learned counsel for the Appellant, the compensation awarded to the first respondent towards pain and suffering, Medical Expenses and disabilities is excessive and not in accordance with the settled principles of law.

6. Per contra, the learned counsel for the first respondent would submit that the first respondent was aged 10 years at the time of the accident and due to the accident, his left leg below the knee was amputated. According to the learned counsel for the first respondent, apart from the amputation of the left leg below the knee, the appellant had also sustained fracture in his right leg. According to the learned counsel for the first respondent, the compensation awarded by the Tribunal is a just compensation.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The nature of injuries sustained by the first respondent has not been disputed by the appellant before the Tribunal.

b) It is an admitted fact that the left leg below the knee of the first respondent had to be amputated because of the injuries sustained by him due to the accident. Apart from the amputation of his left leg below the knee, the first respondent sustained fracture on the right leg and has also sustained multiple injuries all over the body.

c) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the lorry insured with the appellant, the accident had happened.

d) The first respondent has filed nine documents before the Tribunal which were marked as Exs.A1 to A9 including Medical Bills for a sum of Rs.2,41,186.72/- and also a permanent disability certificate Ex.A9 disclosing that due to the grievous

injuries, the first respondent had suffered 70% permanent disabilities.

e) The Tribunal has considered both oral and documentary evidence let in by the appellant under the impugned Award. No document was filed by the appellant before the Tribunal and no witness was examined on the side of the Appellant.

f) The Tribunal has awarded a sum of Rs.25,000/- towards Transport to hospital and extra nourishment cost, Rs.1,00,000/- towards pain and suffering, Rs.5,000/- towards Medical assistance, Rs.1,40,000/- towards permanent disability, Rs.2,41,186.72 towards medical expenses, Rs.1,50,000/- towards future medical expenses and Rs.1,05,000/- towards loss of future earning power.

g) Considering the fact that the first respondent had suffered amputation of left leg below the knee and was aged about 10 years at the time of accident, in the considered view of this Court, the compensation awarded under various heads by the Tribunal is a just compensation.

10. In the light of the above observations, this Court of the considered view that there is no merit in the instant appeal and the appeal is dismissed without costs.

11. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, to the credit of M.C.O.P.No. 457 of 2009, on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishangiri within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent is permitted to withdraw the amount together with accrued interest lying to the credit of M.C.O.P.No.457 of 2009 by filing an appropriate application.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

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To

1. Principal Subordinate Judge,
Motor Accident Claims Tribunal, Krishnagiri

Copy To:

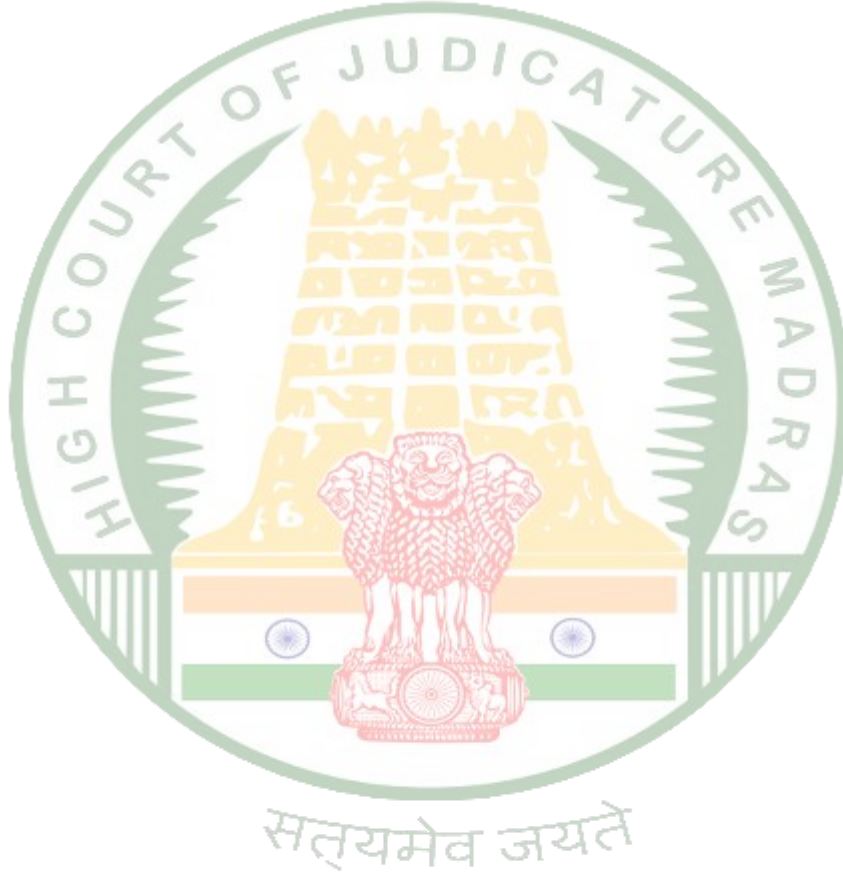
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.67504

+1cc to Mr.Mukund R Pandiyan, Advocate SR.No.66793

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GMV (25/10/2018)



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