

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 31.10.2018

JUDGMENT PRONOUNCED ON : 10.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.2965 of 2012

Minor Poongavanam
Minor Represented by Guardian Elumalai,
S/o.Khannu,
residing at
Mariamman Koil Street,
Thandarai Village and Post,
Thiruvannamalai District. .. Appellant / Petitioner

versus

1.Angamuthu

2.The Divisional Manager,
The United India Insurance Co. Limited,
No.46, Katpadi Salai,
Vellore. .. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against award dated 23.08.2010 passed in M.A.C.T.O.P.No.554 of 2006 on the file of the Motor Accidents Claims Tribunal [Principal Sub Judge], Tiruvannamalai.

For Appellant : Ms.M.Malar
For Respondent No.1 : Exparte
For Respondent No.2 : Mr.N.Vijayaraghavan

J U D G M E N T

Aggrieved over the award dated 23.08.2010 passed by the Motor Accidents Claims Tribunal [Principal Sub Judge], Tiruvannamalai, in M.A.C.T.O.P.No.554 of 2006, the appellant, who is the claimant in the above said MACTOP has preferred this Appeal, seeking the relief to set aside the award passed by the Claims Tribunal and for enhancing the compensation amount.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3. It is a case of injury. The claimant is a minor, aged about 11 years at the time of accident. On 17.08.2005, at about 4.30p.m., while the minor was walking in Tandarai-Andampallam Road near to the residence of one Santhanam, a motorcycle bearing Registration No.PY-01-Z-0074 owned by the first respondent and insured with the second respondent, came in a rash and negligent manner and hit against the claimant, due to the said accident, the claimant sustained grievous injuries all over the body and immediately, she was admitted in the Government Hospital, Tiruvannamalai. For the said accident, a case has been registered by the Veraiyur Police Station in Crime No.267 of 2005 under Sections 279 and 377 of I.P.C. The next friend, who is the father of the minor claimant filed a Claim Petition before the Claims Tribunal under Section 166 of the Motor Vehicles Act, in which, he is claiming compensation of Rs.5 lakhs for the injuries sustained by the claimant in the accident.

4. Opposing the claim made by the claimant, the second respondent being the insurer of the motorcycle, by filing counter, denied the accident itself. It is averred on the side of the second respondent that the first respondent violated the policy conditions and drove the vehicle without any valid and effective licence. According to him, the motorcycle owned by the first respondent is falsely implicated in a case registered by the police for the purpose of claiming compensation and thereby, he sought for dismissal of the Claim Petition.

5. Before the Claims Tribunal, the next friend of the claimant [Elumalai] has been examined as P.W.1 and the Doctor, who issued a Disability Certificate to the injured was examined as P.W.2, further, 8 documents were marked as Ex.P.1 to Ex.P.8. However on the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 5 documents were exhibited as R.1 to R.5.

6. The first respondent remained exparte before the Claims Tribunal.

7. The Claims Tribunal, on the basis of the available records found that the rash and negligent act of the driver of the motorcycle alone is the reason for the accident and passed an award for a sum of Rs.56,000/- along with interest @ 7.5% per annum as compensation to the claimant. Further, it was concluded that, the first and second respondents are jointly and severally liable to pay compensation to the claimant and finally, directed the second respondent to pay the compensation on behalf of the

first respondent. Aggrieved over the said findings, the claimant is before this Court with the present Civil Miscellaneous Appeal praying to enhance the award amount.

8. When the appeal is taken up consideration, I have heard the arguments of Ms.M.Malar, learned counsel appearing for the appellant, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent and also perused the records carefully.

9. Initially, on going through the evidence of P.W.1, he has stated that at the time of accident the driver of the motorcycle drove the vehicle in a rash and negligent manner and hit against the claimant. Even though the said evidence is not corroborated through the independent witness in the cross examination of P.W.1, it was suggested on the side of the second respondent that the driver of the motorcycle admitted the offence and paid a fine before the Magistrate. In order to corroborate the said evidence on the side of the claimant, the copy of the First Information Report was produced as Ex.P.1. Even though the said case has been registered after 5 days from the date of occurrence, in Col.No.7 it was mentioned that the driver of the motorcycle bearing Registration No.PY-01-Z-0074 is the accused in this case. In order to dispute the contents of the said First Information Report, no contra evidence is available on the side of the second respondent.

10. However, R.W.1, who is the Superintendent in Villupuram Transport Corporation RTO Office has stated as, on the date of occurrence, the driver of the motorcycle is not having any valid licence. R.W.2, who is the officer of the second respondent has also corroborated the evidence of R.W.1 in reference to the violation of policy conditions. In otherwise on the side of the respondents, they did not deny the evidence given by the P.W.1 with respect to the negligence aspect. Accordingly, the findings arrived at by the Claims Tribunal that the accident had occurred only due to the rash and negligent act of the driver of the motorcycle is affirmed by this Court.

11. With respect to the quantum of compensation, the Doctor, who issued a Disability Certificate has been examined before the Claims Tribunal as P.W.2, he has stated that on examination of the injured it was identified that the bone situated below the knee was joined abnormally, the said defect will lead 20% partial permanent disability. In otherwise, in order to dispute the percentage of disability, no contra evidence was adduced on the side of the second respondent. So, this Court also affirms the said finding arrived at by the Claims Tribunal in respect of the percentage of disability. With respect to the quantum of compensation, the learned counsel appearing for the appellant would rely on the judgment of our Honourable Apex Court in KUMARI KIRAN vs. SAJJAN SINGH reported

in 2014 (2) TN MAC 553 (SC), and prayed to award compensation, in the said judgment, it has held as follows:

"12. Though, it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs 3 lakhs; up to 60%, Rs 4 lakhs; up to 90%, Rs 5 lakhs and above 90%, it should be Rs 6 lakhs. For permanent disability up to 10%, it should be Rs 1 lakh, unless there are exceptional circumstances to take a different yardstick...."

12. So, as per the observation of our Honourable Apex Court, if a person having the disability of 10% and upto 30% to the whole body, Rs.3 lakhs is the appropriate compensation. But in this case, the Doctor, who assessed the disability has not been stated that the disability is calculated for the whole body. So, the judgment now relied on by the learned counsel appearing for the appellant is not in accordance with the facts now submitted by the claimant. However, the Claims Tribunal awarded Rs.40,000/- under the head of disability for 20% partial permanent disability, since the accident had happened in the year of 2005, the said amount determined by the Claims Tribunal is absolutely correct, which does not need any changes.

13. In other aspects, the Claims Tribunal awarded Rs.2,000/- each under the head of Transportation, Extra-nourishment and Attendant Charges further, Rs.10,000/- was awarded under the head of Pain and Sufferings. In this aspect, since the injured was 11 years minor girl at the time of accident, considering her future, it is necessary to enhance the award amount under the above heads to some extent. Accordingly, this Court is inclined to allow Rs.5,000/- each under the head of Transportation, Extra-nourishment and Attendant Charges, further, Rs.20,000/- was allowed under the head of Pain and Sufferings and Rs.5,000/- for Future Medical Expenses. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Accordingly, the modified compensation payable to the injured [claimant, Poongavanam] is as under:

Sl. No.	Head	Amount Awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Permanent Disability	40,000.00	40,000.00
2	Pain and Sufferings	10,000.00	20,000.00
3	Extra-nourishment	2,000.00	5,000.00
4	Future Medical Expenses	-	5,000.00
5	Transportation	2,000.00	5,000.00
6	Attendant Charges	2,000.00	5,000.00
	Total	56,000.00	80,000.00

14. With respect to the liability, the evidence given by R.W.1 and R.W.2 clearly established that at the time of accident the driver of the motorcycle is not having any licence to drive the motorcycle and hence, the said act is nothing but violation of the policy. It is true if the owner of the vehicle violated the policy conditions, the second respondent is not liable to pay the compensation. However, considering the view of our Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH AND OTHERS reported in 2004 (1) TNMAC (SC) 104 : 2004 ACJ 1, it is necessary to direct the Insurance Company to pay the award amount to the claimant with liberty to recover the same from the owner of the vehicle. So, applying the principles laid down by our Honourable Apex Court, this Court directs the insurer to pay the award amount to the claimant and thereafter, the Insurance Company is permitted to recover the compensation amount from the owner of the offending vehicle.

15. In the result,

[i] The Civil Miscellaneous Appeal is allowed;

[ii] The award amount is enhanced to Rs.80,000/- from Rs.56,000/-. Since the accident had happened in the year of 2005, as of now the claimant has attained the age of majority. The claimant in M.A.C.T.O.P.No.554 of 2006 is entitled to award amount of Rs.80,000/- [Rupees Eighty Thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of

a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [claimant, Poongavanam] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

- 1.The Motor Accidents Claims Tribunal
[Principal Sub Judge],
Tiruvannamalai.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr. M.Malar, Advocate, S.R.No. 85278
+1cc to Mr. N.Vijayaraghavan, Advocate, S.R.No. 85569

C.M.A.No.2965 of 2012

CP(CO)
GN(24/01/2019)