IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.535 of 2018

P.Shree Surya (Minor)
Rep.by his mother, guardian and
Next friend Mrs.P.Sathvika ..Appellant/Petitioner

Versus

1.J.Selvi

2.The National Insurance Co.Ltd.,
No.751, Anna Salai, Chennai -2,
Branch office at Trunk Road,
Poonamallee, Chennai-56. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2015 made in M.C.O.P.No.743 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.P.Sankaranarayanan [for R2]

J U D G M E N T

The appellant/petitioner has filed this appeal against the judgment and decree dated 05.12.2015 made in M.C.O.P.No.743 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 18.06.2012 at about 17.30 hours, while the minor petitioner was travelling as a pillion rider in the two wheeler bearing Registration No.AP-16-BB-2919 in the Kundrathur Main Road, Mangadu, the lorry bearing Registration No.TN-65-3535 belonging to the 1st respondent and insured with the 2nd respondent, came from behind at high speed ; dashed on the two wheeler in which the minor petitioner was proceeding as the pillion rider, causing him injury on right lower limb degloving, Grade III B, Right Foot and Leg and meshed SSG right thigh, Crush Digloving injury,

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right lower limb with Ex.Fix, injury of left leg foot and multiple injuries. The accident occurred only due to the rash and negligent driving by the 1st respondent - driver. The petitioner was aged 8 years and was studying 4th standard at the time of accident and due to the injuries suffered by him, he is not able to walk properly and to attend to his normal work. His studies also got affected and future prospects is spoiled. Hence, the petitioner/injured/claimant seeks a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner. The driver of the lorry did not possess heavy vehicle driving license to drive the lorry. There is no valid permit and fitness certificate for the lorry to operate on road. The same amounts to violation of policy condition and as such, the 2nd respondent is not liable to pay any compensation. The claim of the petitioner is very exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Exs.P.1 to P.19 to prove his claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found negligence on the 1st respondent – driver alone has caused the accident and passed an award for a sum of Rs.5,45,760/- payable by the respondents to the petitioner. Being not satisfied with the quantum of the award, the minor petitioner has come forward with the present appeal, through his Natural Guardian-mother.

6. The learned counsel for the appellant contends that the Tribunal failed to appreciate the evidence properly and passed an award for a very meager amount under different heads. The Tribunal ought to have fixed the loss of earning power of the petitioner at 100%, as his right leg is totally disabled. The Tribunal also failed to take into account the future prospects of the minor petitioner. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the claim of the petitioner is very exorbitant and the injury suffered by the minor petitioner does not warrant assessment at 100% loss of earning capacity. There is no ground made out by the petitioner to award higher amount under different heads. The Tribunal has passed a just and reasonable award which needs no interference. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

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8. Heard both sides and perused the available materials on record.

9. Before the Tribunal, the mother of the minor petitioner deposed as P.W.1 and stated that the accident occurred only due to rash and negligent driving by the 1st respondent lorry driver. She has clearly stated that on 18.06.2012 at about 17.30 hours, while she was driving his two wheeler bearing Registration No.AP-16-BB-2919 with his son as pillion rider, on her way back to home from Mangadu temple, the lorry bearing Registration No.TN-65-3535 came at high speed in the same direction and dashed against the two wheeler from behind, resulting in her son / minor petitioner falling down and as the rear wheel of the lorry ran over the minor petitioner, he suffered fracture as well as multiple injuries all over his body. The police registered a case against the lorry driver and as per Ex.P.1 – F.I.R and as per the evidence of P.W.1, it is clear that due to the rash and negligent driving of the 1st respondent lorry driver alone was the cause for the accident. The respondent did not examin anybody including the driver of the 1st respondent lorry to disprove the version of the accident given by P.W.1. As such, the Tribunal is justified in fixing the negligence on the part of the 1st respondent driver.

10. P.W.1 also stated about the injuries suffered by her son. As stated earlier, the petitioner has suffered right lower limb degloving injury Grade III B, Right Foot and Leg and meshed SSG right thigh, Crush Digloving injury, right lower limb with Ex.Fix, injury of left leg foot and multiple injuries and the injured, after taking first-aid treatment, went to Sri Ramachandra Hospital where he underwent treatment as in-patient from 18.06.2012 to 12.07.2012 for 25 days, where he underwent surgical treatment thrice on 20.06.2012, 27.06.2012 and 03.07.2012. Further, the minor petitioner again took treatment as inpatient for 6 days in S.R.M.C. Hospital and to prove the same the petitioner produced Ex.P.2 – A.R. Copy and Discharge summary as Exs.P.3, P.4, P.15 and P.16. It is clear from the documents produced by the petitioner that he suffered grievous injuries in his right thigh and ankle. The petitioner also produced the photos and CD as Ex.P.6 to show the nature of injury suffered by him. According to the petitioner, his length of the leg is reduced by two inches and his normal standing capacity is totally affected. The Doctor, who was examined as P.W.3 and who assessed the disability suffered by the petitioner, stated that on personal examination and after going through the records of the minor petitioner he assessed the disability at 60% and issued Ex.P.13 – Disability certificate. It is also clear from the evidence on record that the minor petitioner suffered Grade III B degloving injury in his right leg and the length of his leg is reduced due to the injuries

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suffered and consequently skin grafting was done in the leg of the petitioner which was affected. Being a young boy, his future prospects is also affected. As such, considering the nature of injury suffered by the petitioner his future prospects will be affected atleast to the extent of 40%. Considering the fact that the minor petitioner is a student, it will be appropriate to fix the notional income at Rs.8,000/-. It is clear from Ex.P.17 – School certificate, that the minor petitioner was 8 years old at the time of the accident and therefore, applying the multiplier '18', the loss of earning capacity of the minor petitioner is calculated as follows:-

[(Rs.8000 * 40%) * 12 * 18] = Rs.6,91,200/-

Thus, a sum of Rs.6,91,200/- is granted as compensation under the head "Loss of earning capacity".

11. The petitioner also produced medical bills as Exs.P.9 to P.12. On considering the same, the Tribunal fixed the medical expenses at Rs.3,15,760/-. The same appears to be proper. Considering the nature of injuries suffered by the petitioner, the amount awarded under the head Pain and Suffering Rs.1,00,000/- is confirmed, for transportation Rs.20,000/- and for loss of amenities Rs.50,000/- and under the head Nutritious food Rs.20,000/- is awarded.

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:-

| Sl. No. | Head | Amount granted by the Tribunal (Rs.) | Amount awarded by this Court(Rs.) |
|---|---|---|---|
| 1 | Loss of earning capacity | 1,20,000.00 | 6,91,200.00 |
| 2 | Pain and Suffering | 1,00,000.0 | 1,00,000.00 |
| 3 | Medical expenses | 3,15,760.00 | 3,15,760.00 |
| 4 | Transportation | 5,000.00 | 20,000.00 |
| 5 | Nutritious food | 5,000.00 | 20,000.00 |
| 6 | Loss of amenities | - | 50,000.00 |
| 7 | Total | 5,45,760.00 | 11,96,960.00 |

13. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.11,96,960/- from Rs.5,45,760/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along

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with accrued interest, with the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalised Banks in the Interest bearing Fixed Deposit, since the injured is a minor as on date and the Natural Guardian/mother of the injured is permitted to withdraw the interest once in three months till the injured / petitioner / appellant attains majority.

(v) Petitioner/appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bri

To

1. The III Additional District Court,
Poonamallee.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate sr.no.28209
+1cc to Mr.P.Sankaranarayanan, Advocate sr.no.27983

C.M.A.No.535 of 2018

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