IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.991 of 2018

Divya (Minor)
represented by F.N.F.Venkatesan ... Appellant/Appellant

-vs-

1.L.Narendran
2.The National Insurance Co. Ltd.,
No.66, Greams Road,
Chennai - 6. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order dated 25.01.2007 in M.C.O.P. 614 of 1999 passed by Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai - 104 and award compensation in a just and equitable manner.

For Appellant : M/s.Y.Jayanthi Bhaskar,
for Mr.J.Mahalingam

For Respondents: Mr.S.Arun Kumar for R2
No Appearance for R1

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The injured minor claimant whose claim petition was dismissed by the Tribunal is the Appellant. According to the claimant, on 08.08.1998 when she was travelling as a passenger in the Auto-Rickshaw bearing registration No.TN.-29-0958 at E.V.R.Salai, near Vaishnav College, from West to East, a Car bearing registration No.TMQ-2266 driven rashly and negligently by its driver came on the extreme wrong side of the road and dashed against the Auto-Rickshaw causing grievous injuries to the appellant. As a result of the accident, the appellant had suffered permanent disability and she is unable to lead a normal life. Claiming that she should be compensated for the injuries suffered by her, the appellant sought for a compensation of Rs.30,00,000/-.

2. The said claim was resisted by the 1st respondent contending that he had sold the vehicle to one Ram Prakash as early as on 21.05.1998, he has also delivered the possession of the Car. Since, he was not the owner of the car on the date of accident, neither him nor the Insurance Company are liable to pay compensation according to him.

3. The Insurance Company filed a Counter contending that the accident occurred due to rash and negligent driving of the auto-rickshaw by its driver and the driver of the car was not responsible for the accident. The allegations relating to injuries as well as disability suffered by the appellant were denied by the Insurance Company.

4. The Tribunal on a consideration of the evidence on record concluded that it was the driver of the car, who was responsible for the accident. However, the Tribunal found that since the owner of the car had taken a defence that he had sold the car even as on 21.05.1998 i.e., before the accident, the appellant not having taken steps to implead the actual owner of the car cannot claim compensation as against the 1st respondent as well as the Insurance Company. On the aforesaid findings, the Tribunal dismissed the entire claim petition. Aggrieved the claimant is before us by way of this appeal.

5. Pending appeal the claimant was referred to the Medical Board and the Medical Board had assessed her locomotive disability at 75% and the neurophysical disability was assessed at 40%. The appellant was aged 2 years at the time of the accident. She was examined by the Medical Board on 19.05.2018 when she was about 18 years of age. From the opinion of the Medical Board, it is seen that the disability caused to the appellant is almost 100%. She is unable to walk without support because of the injuries suffered by her in the accident.

6.We have heard Ms.Mythri Mahalingam, learned counsel appearing for the appellant and Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company.

7. Ms.Mythri Mahalingam, learned counsel appearing for the appellant would contend that the Tribunal was not right in dismissing the claim petition in its entirety. In view of Section 157 of the Motor Vehicles Act, according to her, even though the owner of the vehicle had transferred the vehicle, the transfer must be deemed to be along with the policy of insurance. Section 157(1) of the Motor Vehicles Act reads as follows:-

> 157(1). Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. 1[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

8. A reading of the above provision makes it clear that even in the event of transfer of vehicle, the policy of insurance is also deemed to be transferred and the Insurance Company will continue to be liable if the accident occurs during the currency of the policy. There is no dispute, in the case on hand that the Insurance cover was alive on the date of accident. Therefore, the Tribunal was not right in concluding that the Insurance Company cannot be made liable in the absence of the real owner of the vehicle. In view of the above conclusion, the award of the Tribunal is set aside.

9. The Tribunal has not gone into the question of quantum. In the normal circumstances, we would have remitted the matter to the Tribunal to determine the quantum of compensation. We are however not inclined to remit this matter because of the lapse of nearly 20 years from the date of the accident. The minor claimant who was aged about 2 years at the time of accident is today has completed 18 years and had already undergone suffering because of the injuries sustained by her in the accident. We don't want to prolong the agony. The Medical Board had examined her and had submitted its report regarding the disability. The permanent disability as per the certificate of the Medical Board is almost 100% [75% locomotive disability and 40% neurophysical disability].

10. Inasmuch as the claimant is a minor, we will have to proceed on the basis of the notional income only. The accident had occurred in 1998, the notional income that could be taken is Rs.2,000/-, adding 40% to it towards future prospects and applying a multiplier of '15' as suggested in Sarala Varma & Other Vs. Delhi Transport Coporation & another reported in 2009 (2) TNMAC 1, the pecuniary loss/ loss of earning power is determined as follows:-

Rs.2,800 x 12 x 15 = 5,04,000/-

11. For permanent disability, the claimant would be entitled to Rs.2,00,000/- at Rs.2,000/- per percentage [2000 x 100]. From the discharge summary, it is seen that the appellant had suffered multiple fractures in her legs and she is unable to move. Therefore, there will be an award of a sum of Rs.1,50,000/- towards pain and sufferings, Rs.10,000/- towards medical expenses, Rs.1,50,000/- towards loss of amenities. Considering the fact that the appellant is a minor girl, there will be an award of a sum of Rs.10,000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.1,00,000/- towards mental agony, Rs.1,00,000/- towards future medical expenses. From the discharge summary, it is seen that the appellant cannot perform her daily routine without the assistance of another person, therefore, she will be entitled to attender charges of Rs.1,00,000/-. Thus, calculated the amount of compensation is as follows:-

Award towards		Amount
Permanent Disability	-	Rs. 2,00,000/-
Pecuniary loss/ loss of earning	-	Rs. 5,04,000/-
Pain and Sufferings	-	Rs. 1,50,000/-
Medical expenses	-	Rs. 10,000/-
Loss of amenities	-	Rs. 1,50,000/-
Transportation	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Mental agony	-	Rs. 1,00,000/-
Future Medical Expenses	-	Rs. 1,00,000/-
Attender charges	-	Rs. 1,00,000/-
Total	-	Rs.13,34,000/-

12. The claimant would be entitled to interest at 7.5% per annum from the date of petition till date of payment. Though Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company would submit that there was some delay in filing the appeal and the claimant will not be entitled to interest for the period of delay, we are unable to countenance the submission in this regard because while condoning the delay, the Division Bench have not observed that the period of delay would be excluded in calculating the interest. We also find from the affidavit filed in support of the delay petition that the delay was caused due to the non drafting of decree by the Tribunal. We therefore, find that the appellant was not responsible for the delay, hence, we do not propose to exclude the period of delay for the calculation of interest.

13. Mr.S.Arun Kumar, would further point out that the award of Rs.1,00,000/- towards future medical expenses may not carry interest. Even here, we do not propose to go on the beaten track, in view of the peculiar facts of the case, where the payment of compensation has been delayed for more than 20 years because of the mistake committed by the Tribunal in dismissing the claim petition in its entirety.

14. We therefore conclude that the Insurance Company shall pay the interest at 7.5% on the compensation of Rs.13,34,000/- from the date of petition viz., 18^{th} December 1998 till date of payment. The Insurance Company is granted six (6) weeks time to deposit the amount. On such deposit, the Tribunal is directed to pay a sum of Rs.2,00,000/- to the claimant and the balance amount shall be kept in Fixed Deposit initially for a period of five years automatically renewable after the expiry of the said period for another five years and the claimant would be entitled to draw quarterly interest there from for her sustainance. The claimant will be entitled to withdraw the balance amount after the period of 10 years.

15. In fine, the appeal is allowed as indicated above with costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

The Motor Accidents Claims Tribunal,
IV Court of Small Causes, Chennai - 104

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+2 cc to Mr.J.Mahalingam, Advocate Sr.No.60073
+1 cc to Mr.S.Arunkumar, Advocate Sr.No.59882

C.M.A. No.991 of 2018

PVS(CO)
CSL/08.07.2019