

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.186 of 2008

The Branch Manager,
National Insurance Company Ltd.,
Branch Office,
Anuradha Complex, 3rd Floor,
No.333, Bangalore Road,
Krishnagiri-635 001. ... Appellant/2nd respondent
..vs..

1.Minor Niranjana
Minor Rep. By her father and guardian
Mahendran). ... 1st Respondent/Petitioner
2.R.Ganapathy ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 28.04.2006 made in MCOP.No.178 of 2005 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate No.I,) Krishnagiri.

For Appellant : Mr.S.Vadivel
Respondents : Mr.V.Kumaravelan for R-1

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 28.04.2006 made in MCOP.No.178 of 2005 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate No.I,) Krishnagiri, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 13.06.2002 at about 16.00 hours, while the minor petitioner was walking on the

extreme left side mud portion of the Bangalore Road, near Indian Bank, Krishnagiri Town, the first respondent two wheeler bearing Registration No.TN-29-P-0568 came at high speed, dashed against the minor petitioner and as she fell down sustained abrasion in the right elbow, swelling and contusion over the right clavicle near the shoulder and abrasion over the left elbow. The accident occurred only due to the negligence of the first respondent owner cum rider of the two wheeler. The said vehicle was insured with the 2nd respondent. For the injuries suffered, the minor petitioner underwent treatment for a long period. Thus, the petitioner sought for a sum of Rs.3,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The accident occurred not due to the negligence of the first respondent, but only due to the carelessness of the minor petitioner. The said two wheeler bearing Registration No.TN-29-P-0568 was not insured with the second respondent on the date of the accident. As such, they are not liable to pay any compensation. The rider of the two wheeler did not possess any valid driving licence. On 13.06.2002 at about 4.00 p.m., while the first respondent was going in his two wheeler, near Indian Bank, in Bangalore Road, Krishnagiri Town, the minor petitioner suddenly crossed the road and on seeing that the first respondent applied sudden brake, but in spite of the same, the petitioner dashed against the two wheeler resulting in the accident. The minor petitioner by her negligence act contributed to the accident. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P9 to prove her claim. On the side of the respondents, R.W.1 was examined and documents Ex.R1 and Ex.R2 were marked.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent driver only caused the accident, passed an award for a sum of Rs.2,03,500/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available

on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the liability on the respondents. The rider of the two wheeler did not possess any valid driving licence and the same was not considered by the Tribunal. The amount awarded by the Tribunal is highly excessive. Thus, the 2nd respondent Insurance Company sought for allowing this appeal and to set aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the accident occurred only due to rash and negligent driving by the first respondent and as such the petitioner is entitled to seek compensation from the respondent who are the owner and insurer of the offending vehicle. The Award passed by the Tribunal is based on proper appreciation of the evidence and there is no ground made out to interfere with the same. Thus, the petitioner/claimants sought for dismissal of the appeal.

10. The father of the minor petitioner who deposed as P.W.1 has stated about the accident which took place on 13.06.2002, but he is not an eye witness to the occurrence. The person who witnessed the accident deposed as P.W.2 and stated that he was running automobile shop in the Bangalore Road, Krishnagiri and on 13.06.2002 at about 4.00 p.m., while he was in his shop, a school going girl was walking along the mud portion of the road towards Krishnagiri Roundana and at that time a two wheeler bearing Registration No.TN-29-P-0568 came at high speed dashed from behind on the minor petitioner forcing her to fell down and she suffered injuries in her right knee, right shoulder and left forearm. The police also registered Ex.P1 First Information Report against the first respondent rider only. The contents of Ex.P1 First Information Report also corroborated the version of the accident stated by P.W.2. On the other hand, there is no acceptable or admissible evidence let in by the respondent to show that there was no negligence on the part of the first respondent. It is also clear from Ex.P4 copy of the Judgment passed, in C.C.No.3173 of 2002, by the Judicial Magistrate, Krishnagiri that the first respondent rider admitted his guilt and paid fine amount in respect of the accident which took place as stated above. Thus, considering the above said evidence, it is apparent that the accident occurred only due to the negligence of the first respondent rider and the Tribunal has correctly concluded and fixed negligence on the first respondent and the same needs no interference.

11. Admittedly, the first respondent's two wheeler was insured with the second respondent and it is clear from the contents of Ex.P3 Motor Vehicle Inspector's Report that there is no mechanical defect in the two wheeler. As such, the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation. Even though, it was contended by the 2nd respondent that there is no valid licence for the first respondent, no criminal action was initiated by the police against the first respondent for not possessing valid driving licence. In Ex.P4 copy of Judgment also nothing is stated about the first respondent not possessing valid licence. Therefore, it is not established by the 2nd respondent that the first respondent drove the vehicle without valid licence. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

12. The petitioner states that the injured was aged about 10 years and studying at 5th standard at the time of accident. After the occurrence, due to the fracture suffered, the petitioner took treatment as inpatient for two days in Nallampatti fracture treatment centre and subsequently as inpatient in Krishnagiri Government Hospital for one week from 15.06.2002. It is evident from Ex.P6 that the petitioner underwent treatment at Nallampatti fracture treatment centre. Ex.P2 is the wound certificate issued by Government Hospital, Krishnagiri and it is clear from the same that the petitioner suffered injuries in her right fore arm, right shoulder, left forearm and fracture in her right knee. It is clear from the same that the petitioner has suffered grievous injuries as well as simple injuries all over the body. The Doctor who deposed as P.W.3 stated that he examined the petitioner physically and also took Ex.P9 X-ray to assess the disability suffered by her. According to P.W.3, due to the fracture and mal-union of the broken bones, it would be difficult for the minor petitioner to do her day today normal work. Further, P.W.3 assessed the disability suffered by the petitioner at 25% and issued Ex.P8 disability certificate. It is therefore clear from P.W.3 Doctor's evidence that the petitioner has suffered partial permanent disability of 25%. In the absence of any contra medical evidence, the Tribunal has accepted the expert medical evidence of P.W.1 and fixed the disability suffered by the petitioner at 25%. However, the Tribunal has awarded a sum of Rs.1,20,000/- towards permanent disability without any basis or proper calculation. As such the same is not proper. Hence, it will be appropriate to compensate the minor petitioner at the rate of Rs.3,000/- per percentage. As such, the disability compensation calculated as follows. $25\% \times \text{Rs.3,000/-} = \text{Rs.75,000/-}$. Therefore, the sum of Rs.1,20,000/- given by the Tribunal as permanent disability compensation is hereby reduced

to Rs.75,000/-. Considering the fact that the petitioner has suffered fracture as well as two other injuries and took treatment as inpatient for a long time, he would have suffered pain and sufferings. As such, it will be appropriate to compensate her by granting Rs.50,000/- towards pain and sufferings instated of Rs.30,000/- given by the Tribunal. Considering the nature of injuries and the fact that the petitioner find it difficulty in reading and writing for long time, it will be appropriate to compensate her by providing Rs.30,000/- towards loss of amenities. The petitioner would have needed the assistance of a attender during the treatment period. Hence, a sum of Rs.5,000/- is awarded towards attender charges. The Tribunal has awarded a sum of Rs.10,000/- towards extra-nourishment and a sum of Rs.3,500/- towards transportation charges. It is pointed out that the same is very low and the petitioner sought for enhancement of the same. Considering the same, a sum of Rs.15,000/- is awarded towards extra-nourishment and Rs.5,000/- is awarded towards Transportation charges Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	1,20,000.00	75,000.00
2.	Pain and sufferings	30,000.00	50,000.00
3.	Transportation	3,500.00	5,000.00
4.	Extra-nourishment	10,000.00	15,000.00
5.	Fracture and simple injuries	40,000.00	-
6.	Loss of amenities	-	30,000.00
7.	Attender Charges	-	5,000.00
	Total	2,03,500.00	1,80,000.00

Accordingly, a sum of Rs.2,03,500/- awarded by the Tribunal is modified and the same is reduced to Rs.1,80,000/-.

13. In the result, this appeal is partly allowed. No costs. The amount of Rs.2,03,500/- awarded by the Tribunal dated 28.04.2006 made in MCOP.No.178 of 2005 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate No.1, Krishnagiri is reduced to Rs.1,80,000/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.1,80,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The Appellant-Insurance

company is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrarrrrg

To

1.The Chief Judicial Magistrate No.I,
Motor Accident Claim Tribunal,
Krishnagiri.

2.The Section Officer
VR Section, High Court, Madras(2 copies)

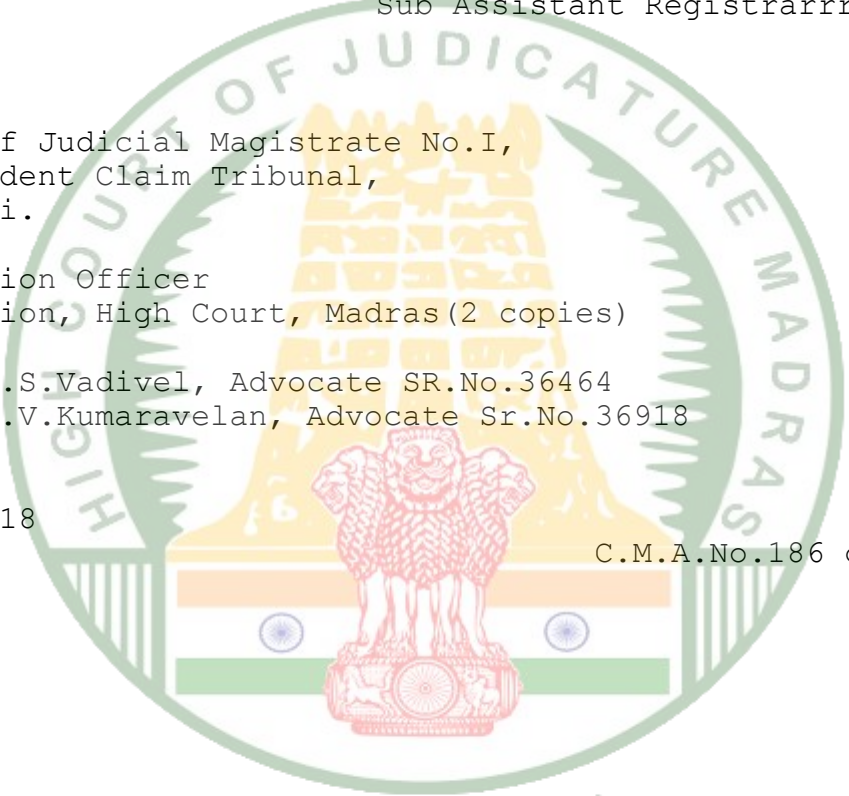
+1cc to Mr.S.Vadivel, Advocate SR.No.36464

+1cc to Mr.V.Kumaravelan, Advocate Sr.No.36918

MR(CO)

sm:26.7.2018

C.M.A.No.186 of 2008



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