

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2121 of 2007

Minor. Priya, Rep. by her mother and
natural guardian, Selvi,
W/o. Late A.Palanisamy ... Appellant /Claimant

Vs.

1. R.Raghu
2. P.Srinivasan
3. The United India Insurance Company Ltd.,
TKM Complex, 1st Floor, Katpadi Road,
Vellore ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2007 passed in MCOP No.40 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani.

For Appellant : Mr. K.Govi Ganesan

For Respondents: Mrs. I.Malar, for R-3.
NA for R2

J U D G M E N T

As against the claim made for a sum of Rs.5,00,000/-, the Tribunal, after fixing 50% contributory negligence on the mother of the claimant and 50% on the Insurer of the lorry, has awarded a total compensation of Rs.1,32,100/-, to the appellant, vide award dated 15.02.2007 passed by the Claims Tribunal in MCOP No.40 of 2004.

2. It was the case of the claimant before the Tribunal that on 14.11.2003 at about 09.30 am, when the appellant / claimant, along with her mother, was standing on Mettur - Bhavani Road, a lorry bearing registration No.TN23-E-1389, which was driven by its driver in a rash and negligent manner and without making any sound and without following the traffic rules, hit the claimant. Due to the said accident, the claimant / appellant sustained injuries in both legs and became permanently disabled. Contenting that the accident had happened only due to the rash and negligent driving by the driver of the lorry, the claimant / appellant has preferred a petition claiming a compensation of Rs. 5,00,000/- before the Claims Tribunal, as against the

respondents herein, who are the driver, owner and insurer of the lorry.

3. The Tribunal, based on the evidence and documents adduced by both sides, has fastened 50% liability on the claimant herself and 50% on the owner and Insurer of the lorry and ultimately awarded a total compensation at Rs.1,32,100/- with interest at 6% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum of compensation awarded by the Tribunal, the Claimant has filed this Appeal.

4. Heard both sides.

5. The learned counsel appearing for the appellant / claimant submitted that the Tribunal has erred in fixing 50% contributory negligence on the appellant's mother, overlooking the fact that the driver of the lorry himself admitted the guilt and paid the fine amount before the Criminal Court; without assigning any valid reason the Tribunal has rejected Ex.P-10-disability certificate issued by P.W.2-Doctor; and in any event, the award passed by the Tribunal is too low, which needs significant enhancement.

6. Per contra, the learned counsel appearing for the third respondent / Insurance Company submitted that the Tribunal, based on Section 114 of the Indian Evidence Act and probabilities of the case, has fastened the liability equally on the claimant as well as the Insurer. She further submitted that the accident was of the year 2003 and the total compensation arrived at by the Tribunal was Rs.1,32,100/-, fixing contributory negligence between the claimant and the Insurer, which perfectly matches II Schedule of the Motor Vehicles Act. Hence, she sought to confirm the judgment and decree, impugned herein.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. P.W.1 / mother of the claimant has deposed that on 14.11.2003 at about 09.30 am, when the appellant / claimant and herself was standing on Mettur - Bhavani Road, a lorry bearing registration No.TN23-E-1389, which was driven by its driver in a rash and negligent manner and without making any sound and without following the traffic rules, hit the claimant. The evidence of P.W.1 was supported by Ex.P-1-First Information Report and Ex.P-6-charge sheet as per which, the driver of the lorry was responsible for the accident.

9. The Tribunal has also taken note of the cross-examination of P.W.1, mother of the minor claimant, wherein she has stated that she, along with her minor girl child (the claimant) was walking on the road and at that time, the lorry

hit the child and the accident had happened. Placing reliance on these version, the Tribunal was of the view that the mother had not carried the child in her hand and had only walked along with the child and accordingly fastened 50% contributory negligence on the claimant, by applying the provisions of Section 114 of the Indian Evidence Act. However, this Court is not inclined to accept the finding so rendered by the Tribunal. As per Ex.P-7-Judgment of the Criminal Court, the driver of the lorry himself has admitted his guilt and paid the fine amount before the Criminal Court. Further, the driver of the lorry who is competent person to speak about the manner of accident was not examined before the Tribunal, which is a fatal to the case. When the best evidence is eschewed, it cannot be accepted that the claimant / appellant has also contributed to the accident. That apart, there is no iota of evidence or document produced on the side of the appellant herein to disprove the manner of accident as alleged by the claimant / appellant. In such circumstances, the Tribunal ought not to have drawn adverse inference against the Claimant / appellant herein. Hence, the finding of the Tribunal that the claimant / appellant also contributed to the accident at 50% is set-aside and the entire compensation as awarded by the Tribunal, is hereby ordered to be honoured by the R-3 herein / Insurance Company.

10. As far as the quantum of compensation arrived at by the Tribunal is concerned, based on Ex.P-8-medical bill series, a sum of Rs.26,100/- was awarded. Towards Transportation expenses and extra nourishment, sums of Rs.1,000/- and Rs.5,000/- have been awarded. Towards pain and suffering, a sum of Rs.1,00,000/- was awarded. Thus, the Tribunal has arrived at the total compensation at Rs.1,32,100/-.

11. P.W.1, in her evidence, has stated that skin of the claimant has been removed by 4 cm in her both legs, plastic surgery has been performed on her and she has been hospitalized for more than one month, which was also supported by the evidence of P.W.2-Doctor. In this case, the claimant was aged 3 years. The pain and suffering at the tender age of 3, speaks volume. Further, the shock and mental agony suffered by the said child cannot be explained in terms. Since the mother of the child has to wear and tear the minor child, the compensation awarded towards pain and sufferings at Rs.1,00,000/- cannot be said to be on the higher side and in fact, it is low, especially when the mother is a widower. Hence, the quantum arrived at by the Tribunal at Rs.1,32,100/-, along with interest and costs is hereby confirmed as such.

12. In the result, this Civil Miscellaneous Appeal filed by the claimant / appellant is partly-allowed. No costs.

13. The third respondent-Insurance Company is directed to deposit the entire compensation awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a

copy of this judgment. On such deposit being made, the Tribunal shall deposit the same in any one of the Nationalized Banks till the minor claimant / appellant herein attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months directly from the Bank under intimation to the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

srk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal, Bhavani.

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

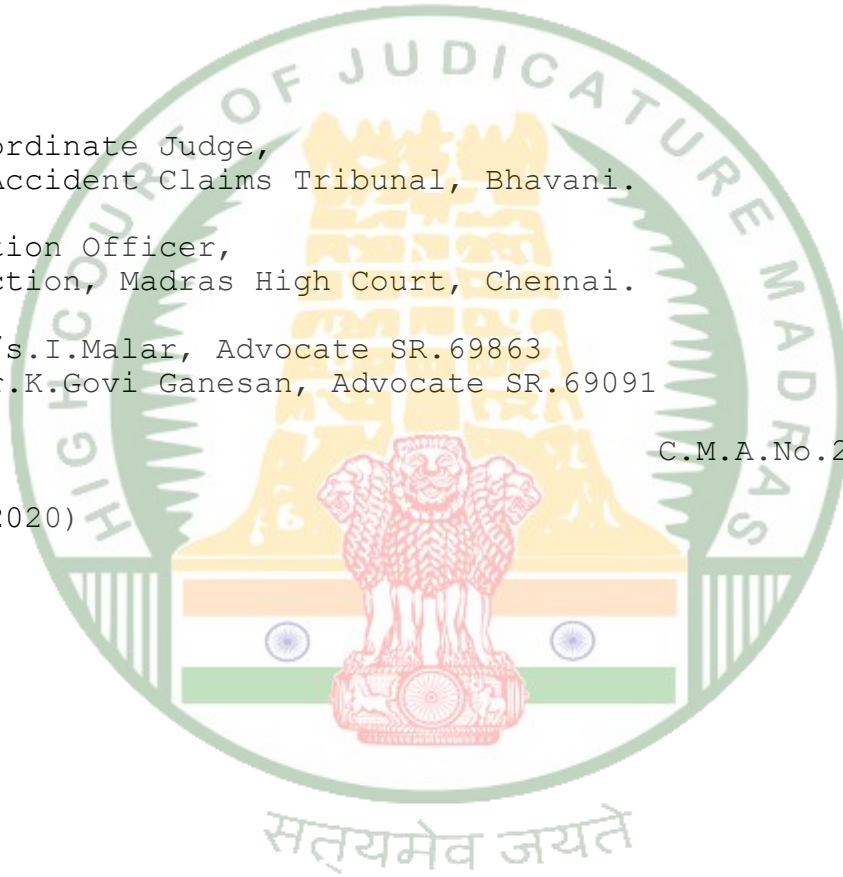
+1cc to M/s.I.Malar, Advocate SR.69863

+1cc to Mr.K.Govi Ganesan, Advocate SR.69091

C.M.A.No.2121 of 2007

KK(CO)

CB(03/09/2020)



WEB COPY