



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.1186 OF 2011  
and M.P. NO. 1 of 2011

The Divisional Manager  
United India Insurance Co. Ltd.  
No.4 & 5, Kandasami Mudali Street,  
Ranipet.

...Appellant

Vs.

1. Minor Akash  
Rep. By Mother and Guardian S.Latha

2. The Correspondent  
Vedavalli Vidyala Senior Secondary School  
Katteri Village, Chennai - Mumbai Trunk Road  
Walajah Taluk, Vellore Dist.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the decree and Judgment made in M.C.O.P.No.263 of 2009 dated 20.12.2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Vellore.

|                 |                                                     |
|-----------------|-----------------------------------------------------|
| For Appellant   | : Mrs. K.Saraswathi                                 |
| For Respondents | : Mr.K.G.Senthil Kumar for R1<br>R2 - No appearance |

#### JUDGMENT

The appellant United India Insurance Company Limited, Ranipet, is the second respondent in M.C.O.P. No.263 of 2009 dated 20.12.2010 on the file of the Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Vellore.

2. The first respondent/claimant represented by his guardian/mother, filed the abovesaid claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 20.12.2008. According to the first respondent/claimant, when he was walking along Ocheri Road, near Ayarpadi Kanniyammal Bunk shop, a speeding van bearing Registration No.TN-23-AS-2958 hit him, as a result of which, he sustained grievous injuries all over his body and his right foot was amputated. It is also further contended that the first



respondent/claimant was immediately rushed to Government Hospital At Walajah and thereafter, referred to CMC Hospital at Vellore. It is the contention of the first respondent that the driver of the van who drove the vehicle in a rash and negligent manner was responsible for the accident and that since the said van was insured with the present appellant, both of them are jointly and severally liable to pay compensation of Rs.10,00,000/- to him.

3. The present appellant contested the claim petition before the tribunal. The learned Chief Judicial Magistrate, after analysing the records, awarded a compensation of Rs.4,36,122/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

4. Aggrieved over the orders passed by the tribunal, the United India Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act 1988.

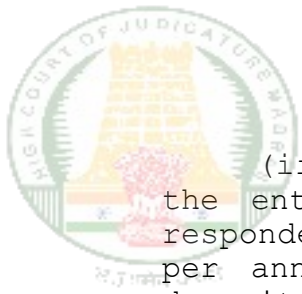
5. Mrs. K. Saraswathi, learned counsel appearing for the appellant would contend that the first respondent also contributed to the accident and therefore, 50% should be deducted towards contributory negligence.

6. It is pertinent to point out that the injured was a minor child aged 6 years and a perusal of records shows that he was walking in the left hand side of the road. It is also clear from the FIR that the driver of the van bearing registration No. TN-23-AS-2958 was rash and negligent in driving his vehicle and therefore, the negligence fixed on the driver of the van bearing registration TN-23-AS-2958 by the tribunal cannot be found fault with. As far as the quantum of compensation is concerned, the tribunal has awarded a sum of Rs.4,36,122/- together with interest at the rate of 7.5% to the first respondent / claimant. The first respondent / claimant did not file any cross objection or appeal against the quantum of compensation awarded by the tribunal. This is the case, where, the right foot of the first respondent was amputated. It is also relevant to point out that the first respondent/claimant was aged just 6 years on the date of accident and he lost his right foot. In the facts and circumstances, the quantum of compensation awarded by the tribunal cannot be said to be on the higher side.

7. In view of the reasons cited above,

(i) The appeal filed by the United India Insurance company fails and is therefore dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

(ii) The award passed by the Tribunal is upheld.



(iii) The appellant / Insurance Company is directed to pay the entire compensation amount of Rs.4,36,122/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant, the first respondent/claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Chief Judicial Magistrate,  
Motor Accidents Claims Tribunal, Vellore.

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

+1 cc to M/s.C.R.Krishnamoorthy, Advocate Sr.No. 5132  
+1 cc to Mr.K.G.Senthil Kumar, Advocate, SR.No.5348

AKM/29.09.19/3P- 5C /

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