

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1103 & 1616 of 2015
and M.P.No.1 of 2015

C.M.A.No.1103 of 2015:

S.Sivanipriya (Minor)
Represented by her father
P.Selvam .. Appellant/Petitioner

Vs.

1. H.Bhola Shankar
2. United India Insurance Company
Limited, No.64, Armenian Street,
Chennai-600 001. ... Respondents/Respondents

C.M.A.No.1616 of 2015:

United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai-1. Appellant/2nd Respondent

Vs.

1. Minor S.Sivanipriya
Represented by her father
P.Selvam
2. H.Bhola Shankar .. Respondents/Petitioner &
1st Respondent

COMMON PRAYER:-

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 02.09.2014 made in M.C.O.P.No.1186 of 2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

In C.M.A.No.1103 of 2015

For Appellant : Mr.S.Murugan

For R2 : Mr.S.Arunkumar

In C.M.A.No.1616 of 2015

For Appellant : Mr.S.Arunkumar

For R1 : Mr.S.Murugan

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 02.09.2014 made in M.C.O.P.No.1186 of 2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The appellant in C.M.A.No.1103 of 2015 is claimant in M.C.O.P.No.1186 of 2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. The claimant filed the above claim petition claiming a sum of Rs.20,82,500/- as compensation for the injuries sustained by her in the accident that took place on 16.07.2010. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent being insurer of the said car to pay a sum of Rs.4,15,500/- as compensation to the claimant at first instance and recover the same from the 1st respondent. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with C.M.A.No.1103 of 2015 seeking enhancement of compensation. Against the said award dated 02.09.2014 made in M.C.O.P.No.1186 of 2012, the 2nd respondent-Insurance Company has come out with C.M.A.No.1616 of 2016 challenging the liability fastened on them.

4.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the cheque issued by the 1st

respondent-owner of the vehicle towards premium of insurance policy was returned by the bankers on the ground that signature of the 1st respondent differs. On receipt of returned cheque, the 2nd respondent-Insurance Company canceled the insurance policy and intimated the 1st respondent-owner of the vehicle and concerned Regional Transport Office about the cancellation of policy. The 1st respondent-owner of the vehicle did not pay the premium and did not produce the vehicle for inspection. The 2nd respondent-Insurance Company has discharged its burden by intimating the 1st respondent-owner of the vehicle and Regional Transport Office about the cancellation of policy. The Tribunal without appreciating the evidence let in by the 2nd respondent-Insurance Company, erroneously fixed the liability on the 2nd respondent. In any event, the Tribunal has awarded excessive amount and the claimant is not entitled for any enhancement of compensation and prayed for setting aside the award of the Tribunal.

5. Per contra, the learned counsel appearing for the claimant contended that the 2nd respondent-Insurance Company has failed to prove that policy was canceled and the alleged letter of cancellation of policy was sent to the 1st respondent as well as Regional Transport Office. The Tribunal considering the evidence let in by the 2nd respondent held that the 2nd respondent has failed to prove their contention. As far as quantum of compensation is concerned, the claimant is the minor girl aged about 3 ½ years at the time of accident, due to the accident, her face was disfigured and her social and marital prospects are very much affected. The Tribunal has awarded only Rs.50,000/- each towards loss of social status and loss of marital prospects, which are meager. But at the time of calculation, the Tribunal has awarded only Rs.40,000/- each under those heads. PW2-Doctor has certified the disability of the claimant at 50% as she requires another surgery. The Tribunal has erred in awarding only a sum of Rs.25,000/- towards future medical expenses, which is on the lower side. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of C.M.A.No.1616 of 2015 filed by the Insurance Company and allowing of C.M.A.No.1103 of 2015 for enhancement of compensation.

6. Heard the learned counsel appearing for the claimant as well as 2nd respondent-Insurance Company and perused the materials available on record.

7. From the materials available on record, it is seen that according to the 2nd respondent-Insurance Company, the cheque issued by the 1st respondent-owner of the vehicle towards premium for policy was returned on the ground that the signature in the cheque of the 1st respondent differs. On receipt of the returned

cheque, the policy was canceled and the same was informed by letters-Exs.R3 and R4 to the 1st respondent as well as Regional Transport Office. The Tribunal considering the evidence of RW1 and Exs.R1 to R5, found that the 2nd respondent-Insurance Company has not produced either receipt for having sent the letters to the 1st respondent as well as Regional Transport Office by RPAD and also failed to produce any acknowledgment card, which was received by the 1st respondent as well as Regional Transport Office. On such finding, the Tribunal has held that the 2nd respondent-Insurance Company failed to prove that intimation was given to the 1st respondent as well as Regional Transport Office about cancellation of policy. The Tribunal has given valid reason for such conclusion and there is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as quantum of compensation is concerned, the claimant examined PW2-Doctor, who has deposed in his evidence about the nature of injury, disfigurement, requirement of further surgery by the claimant and certified disability of the claimant at 50%. The Tribunal has accepted the evidence of PW2-Doctor with regard to the percentage of disability and awarded a sum of Rs.1,00,000/- towards disability by awarding Rs.2,000/- per percentage of disability. The Tribunal has granted only Rs.50,000/- each towards loss of social status and loss of marital status. But while calculating the award, the Tribunal has granted only a sum of Rs.40,000/- each towards loss of social status and loss of marital prospects. Considering the fact that the claimant is the female child and she has suffered disfigurement, a sum of Rs.1,00,000/- each is granted towards loss of social status and loss of marital prospects. PW2-Doctor in his evidence has deposed that the claimant has to undergo another surgery. A sum of Rs.25,000/- awarded by the Tribunal towards future medical expenses is meager. Considering the evidence of PW2-Doctor, who has deposed that the claimant requires further surgery, a sum of Rs.75,000/- is enhanced towards future medical expenses. The Tribunal has awarded a sum of Rs.15,000/- and Rs.50,000/- towards extra nourishment and disfigurement respectively and the same is hereby enhanced to Rs.35,000/- and Rs.1,00,000/- respectively. The appellant was admitted as in-patient in hospital from 16.07.2010 to 09.08.2010 and the Tribunal has not awarded any amount towards attendant charges. The claimant is entitled to Rs.15,000/- towards attendant charges. The Tribunal has awarded a sum of Rs.20,000/- and Rs.1,00,000/- towards loss of expectation of life and pain & suffering and the same are hereby enhanced to Rs.50,000/- and Rs.2,00,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transport to Hospital	10,000	10,000	Confirmed
2.	Extra Nourishment	15,000	35,000	Enhanced
3.	Damage to Clothing	500	500	Confirmed
4.	Incidental Medical Expenses	15,000	15,000	Confirmed
5.	Future Medical Expenses	25,000	75,000	Enhanced
6.	Disfigurement	50,000	1,00,000	Enhanced
7.	Loss of Social Status	40,000	1,00,000	Enhanced
8.	Loss of Marital Status	40,000	1,00,000	Enhanced
9.	Loss of Expectation of Life	20,000	50,000	Enhanced
10.	Pain and Suffering	1,00,000	2,00,000	Enhanced
11.	Disability of 50% at Rs.2,000/- per percentage	1,00,000	1,00,000	Confirmed
12.	Attendant Charges	-	15,000	Granted
	Total	Rs.4,15,500/-	Rs.8,00,500/-	Enhanced by Rs.3,85,000/-

9. In the result, C.M.A.No.1616 of 2015 filed by the Insurance Company is dismissed and C.M.A.No.1103 of 2015 is partly allowed and the compensation of Rs.4,15,500/- awarded by the Tribunal is hereby enhanced to Rs.8,00,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd

respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 at first instance and recover the same from the 1st respondent. The share of the minor claimant is directed to be deposited in any one of the Nationalized Bank till she attains majority. The father of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj/rst

To

1. The Motor Accident Claims Tribunal
III Judge, Court of Small Causes, Chennai.
2. The Section Officer
V.R.Section
High Court, Chennai.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.7771
+lcc to Mr.S.Murugan, Advocate, S.R.No.6997

C.M.A.Nos.1103 & 1616 of 2015
and M.P.No.1 of 2015

PA(CO)
CS/18/06/2019

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