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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.489 of 2009 and 795 of 2009
and M.P.No.1 of 2009

CMA No.489 of 2009

National Insurance Co., Ltd
Branch Office-1, Thanthai Periyar
Market Complex, Salem-636 001.

...Appellant/2nd Respondent

Vs

1.Minor Manojkiran
represented by Next friend and
father Rajamanickam

..1st Respondent/Claimant

2.S.Saradha

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.09.2008 made in MCOP No.1271 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-1, Salem.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.V.R.Rajasekaran - for R1

CMA No.795 of 2009

Minor Manojkiran
represented by next friend and his
father Rajamanickam

...Appellant/Claimant

Vs

1.S.Saradha



2.National Insurance Co., Ltd
Branch Office-1, Thanthai Periyar
Market Complex, Salem-636 001.

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...Respondents/Respondents

Appeals filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.09.2008 made in MCOP No.1271 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-1, Salem.

For Appellant : Mr.V.R.Rajasekaran

For Respondents : Ms.N.B.Surekha for R2

COMMON JUDGMENT

C.M.A.No.489 of 2009 is filed by the Insurance Company against the award of a sum of Rs.2,24,000/- towards compensation to the first respondent, for the grievous injuries sustained by him in a motor vehicle accident. C.M.A.No.795 of 2009 is filed by the claimant against the very same award, claiming enhancement of compensation for the grievous injuries caused to him in the accident.

2.The case in brief, is as follows:

On 10.05.2004, when the claimant Minor Manojkiran was travelling in a bicycle on the Azhagapuram to Kattur Main Road, the tempo van belonging to the second respondent in C.M.A.No.489 of 2009 bearing Regn.No.TCT-1842, came in a rash and negligent manner and dashed against the bicycle. Due to the said impact, the claimant Minor Manojkiran sustained serious head injuries and grievous injuries all over the body. The claimant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,24,000/-, with interest at the rate of 7.5% per annum from the date of the petition.

3.Challenging the same, the appellant Insurance Company has filed CMA No.489 of 2009. The claimant has filed CMA No.795 of 2009, seeking enhancement of compensation, considering the grievous nature of injuries sustained by him.

4.The learned counsel for the Insurance Company has contended that the Tribunal has failed to see that the driver of the tempo van was not possessing the valid licence and hence it



ought to have fastened the liability only on the owner of the vehicle and exonerated the insurance company from the liability. Learned counsel for the Insurance Company further contended that the quantum of compensation fixed by the Tribunal is excessive and against the evidence placed before it.

5.The learned counsel for the claimant submits that the Tribunal has not properly considered the permanent disability caused to the claimant - a minor boy at the time of accident and the pain and suffering undergone by him and hence the meagre amount of Rs.54,000/- awarded towards permanent disability is very much on the lower side. Hence, the learned counsel for the claimant assails the award on the ground of unjust compensation and seeks enhancement.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.P.W.2-Nandakumar is the eye-witness to the accident. He deposed before the Tribunal that when he was proceeding to his house by walk on the Azhagapuram Main Road, he saw the minor claimant proceeding in his bicycle ahead of him on the left side of road and at that time, the tempo van in question came from the opposite direction in a rash and negligent manner and dashed against the minor claimant and consequently the claimant fell on the road with bleeding head injury. He further deposed that the accident had occurred only due to the rash and negligent driving of the driver of the tempo van. Taking note of the same and also the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tempo van, which factual finding this Court is not inclined to interfere.

8.With regard to the contention raised on the side of the Insurance Company that the driver of the tempo van was not possessing the valid driving licence, it is seen that Ex.R1-Claim Form and Ex.R2-copy of Insurance Policy have been filed on the side of the Insurance Company before the Tribunal. It was put forth on behalf of the Insurance Company before the Tribunal that a letter has been sent to the owner of the vehicle in this connection and a copy of the letter is available with them, but the same has not been produced before the Tribunal. Further, it is seen that they have not placed any information before the Tribunal as regards any further steps taken, pursuant to sending the letter. In these circumstances, the Tribunal, relying upon the judgments of the Hon'ble Supreme Court, correctly directed



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11.The 2nd respondent/ Insurance Company is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant/ claimant who was minor at the time of accident, would have attained majority by now. Hence, on such deposit being made, the claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

KST

To

1.The Motor Accidents Claims Tribunal
Additional District Judge, Fast Track Court-1
Salem.

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

+1 CC to M/s. N.B. Surekha, Advocate sr 72384.

C.M.A.No.489 of 2009
& C.M.A.No.795 of 2009

RR(CO)
SP(24/01/2022)