

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.241 of 2015

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai -2

... Appellant/2nd Respondent

Vs.

1.G.Mohana Priya

2.G.Shanmugam

... Respondents/Petitioner
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.09.2014 made in M.C.O.P.No.3530 of 2003 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.J.Ramkumar

सत्यमेव जयते

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 23.09.2014 made in M.C.O.P.No.3530 of 2003 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.3530 of 2003 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by her in the accident that took place on 13.06.2001. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.1,00,000/- as compensation to the 1st respondent. Against the said award dated 23.09.2014 made in M.C.O.P.No.3530 of 2003, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the liability only on this appellant who is the 2nd respondent before the Tribunal. The owner of the vehicle has committed breach of policy conditions and the statute and plied the vehicle insured with the appellant without valid and effective permit and fitness certificate. The Tribunal has not properly appreciated the evidence of RW1, the Accountant from RTO and RW1, the official from the appellant and Ex.R2, the notice sent to the owner of the vehicle, Ex.R3, the investigation report and Ex.R4, the copy of policy which very much proved the case of the appellant that the insured vehicle was driven without permit and FC. Further contended that the Tribunal erroneously awarded excessive sum of Rs.1,00,000/- as compensation for the fracture of clavicle for the accident of the year 2003. PW2/Doctor assessed the disability only after 13 years after the accident and thus the award of Rs.30,000/- for the alleged disability is unsustainable. The sum awarded by the Tribunal as compensation is excessive under different heads and hence prayed for setting aside the award of the Tribunal.

4.Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/Insurance Company as well as Mr.J.Ramkumar, learned counsel appearing for the 1st respondent and perused the materials available on record.

5.From the materials available on record, it is seen that the 1st respondent/claimant examined P.W.2-Doctor, who deposed about the nature of injuries, treatment taken and disability suffered by 1st respondent. Considering the nature of injuries and disability, P.W.2/Doctor certified that 1st respondent has suffered with 30% of disability. But it is seen that P.W.2/Doctor is not a Doctor who gave treatment to the claimant at any point of time and he assessed the disability for the

appellant nearly 13 years after the accident. The claimant has not produced any document to prove the treatment taken by the appellant. The claimant was aged 7 years at the time of accident. In Ex.P2 her age was mentioned as 7 years only. No contra evidence was produced. Hence the age of the 1st respondent/claimant is fixed as 7 years old at the time of accident. The accident is of the year 2001. The Tribunal has taken disability of the appellant at 15% by awarding Rs.2,000/- per percentage (Rs.2,000/- x 15%) Rs.30,000/- towards disability awarded by the Tribunal is reasonable and does not require any modification. As per Exs.P2 and P3, the claimant/1st respondent has taken treatment only as an out patient. The claimant was taken to Gowtham Hospital, Chennai and subsequently she went to Puthur Hospital. Since the claimant was only 7 years old girl at the time of accident, the fracture bone would easily get united. Considering the fact that a girl aged 7 years is supposed to lead her life with joy, fun and enjoyment with dreams and due to the injuries, she could not compete with other students in sports and games for a little period of time as that of other students. The Tribunal has awarded compensation under the heads viz., disability, pain & suffering, extra nourishment, attendant charges, transportation charges and loss of future prospects & amenities, which are not excessive and does not warrant interference by this Court.

6. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,00,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. No costs.

7. The appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3530 of 2003. On such deposit, the 1st respondent/ claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge No.II,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

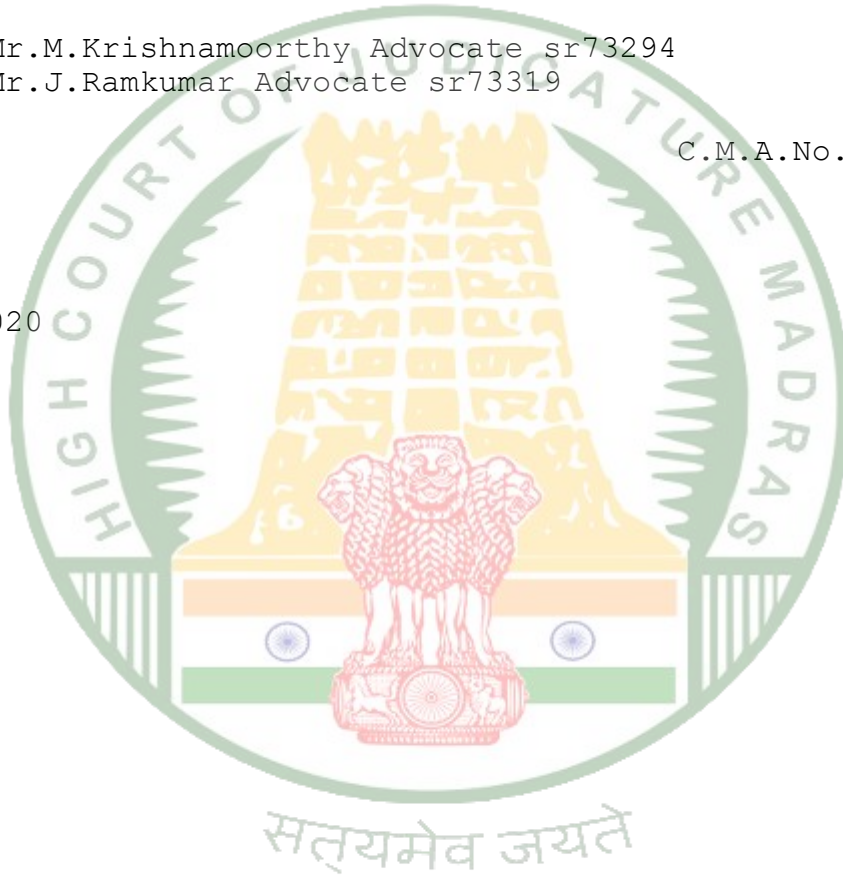
2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.M.Krishnamoorthy Advocate sr73294

+1 cc to Mr.J.Ramkumar Advocate sr73319

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