

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 344 of 2015
and M.P. No. 1 of 2015

New India Assurance Co. Ltd.,
45, Moore Street, Chennai 1. .. Appellant/4th Respondent

Vs.

1. K.Gomathy
(minor rep. by father and natural guardian, Karthikeyan)
2. P.Kasthuri
3. United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai.
4. S.Anusuya ... Respondents/Petitioner &
Respondents 1 to 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.10.2014, made in M.C.O.P.No.3627 of 2011, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Madras.

For Appellant : Ms.A.Salomi
for Mr.C.Rameshbabu

For Respondents: Mr.S.Natana Rajan (for R1)
No appearance (for R2)

No appearance (for R4)

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 17.10.2014 made in M.C.O.P.No.3627 of 2011, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Madras.

2.The 1st respondent-claimant filed M.C.O.P.No.3627 of 2011,

on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Madras, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 29.05.2005.

3. According to the 1st respondent, on the date of accident, while she was traveling in a van belonging to the 4th respondent herein, driver of the lorry belonging to the 2nd respondent proceeding in front of the van suddenly stopped the vehicle without any signal. Due to that, the driver of the van applied brake, but van got colluded with the lorry and thus, accident had occurred. The 1st respondent, aged 15 years, sustained grievous injuries. According to the 1st respondent, the drivers of both the vehicles are responsible for the accident. The 3rd respondent, insurer of the lorry and appellant as insurer of the van are liable to pay compensation.

4. The respondents 2 to 4 remained exparte before the Tribunal. The appellant filed counter statement and denied that the driver of the van was responsible for the accident. The appellant contended that the accident occurred only when the lorry proceeding in front of the van suddenly applied brake and stopped without any signal. Only the driver of the lorry is responsible for the accident and appellant is not liable to pay any compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined her father as P.W.1 and one Dr. N. Saichandran was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant has not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to negligence on the part of the drivers of both the vehicles belonging to the 2nd and 4th respondents and directed the appellant as well as 3rd respondent to jointly and severally pay a sum of Rs.4,96,000/- as compensation to the 1st respondent.

7. Against the said award dated 17.10.2014, made in M.C.O.P.No.3627 of 2011, the appellant has come out with the present appeal.

8. Learned counsel appearing for the appellant contended that the Tribunal having held that the claim petition is connected to the earlier proceedings in M.C.O.P. Nos. 4723 to 4729 of 2005 and M.C.O.P. Nos. 546 and 643 of 2006 and agreed with the said finding on the issue of negligence, failed to appreciate the said negligence apportioned and fixed equally between the owners and insurers of the vehicle in equal moieties. In the present case, it ought to have been held that

the owners and insurers of the lorry and van are liable to pay the compensation in equal moieties. The Tribunal erred in holding that the owners and insurers of the lorry are jointly and severally liable to pay, instead of apportioning the negligence and liability equally. The learned counsel for the appellant contended that the Tribunal failed to see the award passed by the Tribunal in M.C.O.P. Nos. 4723 to 4729 of 2005 and M.C.O.P. Nos. 546 and 643 of 2006. The Tribunal is not correct in fixing 15% as loss of earning capacity, Rs.10,000/- per month as notional income and granting 50% towards future prospects. The amounts awarded for medical expenses are excessive and prayed for setting aside the award of the Tribunal.

9. Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record. Though notice has been served on the respondents 2 and 4 and their names are printed in the cause-list, there is no representation for them either in person or through counsel.

10. From the materials on record, it is seen that M.C.O.P. Nos. 4723 to 4729 of 2005 and M.C.O.P. Nos. 546 and 643 of 2006 were filed claiming compensation, arising out of the very same accident, before the IV Small Causes Court, Chennai. Originally, in the common award dated 26.11.2010 made in M.C.O.P. Nos. 4723 to 4729 of 2005 and M.C.O.P. Nos. 546 and 643 of 2006, it was held that both the drivers of the lorry and van are equally negligent and caused accident. In view of the same, it was held that the 3rd respondent and appellant are jointly and severally liable to pay the compensation. The Tribunal in the present case, adopted the said finding since the claim of the 1st respondent is based on the same set of facts and fixed negligence and liability on the respondents 2 to 4 and appellant. From the decree, it is seen that the Tribunal has held that the 3rd respondent and appellant are directed to pay the compensation, but did not apportion the percentage of liability. From the materials on record, it is seen that both the drivers of lorry and van are equally negligent and contributed equally for the accident. Hence, the 3rd respondent and appellant are each liable to pay 50% of the compensation awarded to the 1st respondent.

11. As far as the quantum of compensation is concerned, the 1st respondent was minor at the time of accident. The Hon'ble Apex Court in the judgment reported in 2014 (2) TNMAC 6 (SC) [V.Mekala Vs. M.Malathi and another], has fixed the notional monthly income of the injured minor claimant at Rs.10,000/- and granted 50% enhancement towards future prospects. The Tribunal following the above said judgment of the Hon'ble Apex Court, has granted the same amount to the 1st respondent/claimant herein, as the 1st respondent was minor aged 15 years at the time of

accident. There is no error in the calculation made by the Tribunal to arrive at the said compensation. The amounts granted by the Tribunal under different heads are not excessive, warranting interference by this Court.

12. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.4,96,000/- along with interest and costs is confirmed. The 3rd respondent and appellant are each directed to deposit 50% of the award amount along with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 3627 of 2011. On such deposit, the Tribunal is directed to deposit the said amount in any one of the Nationalized Banks till the minor attains majority. The father of the minor 1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Gsa

To

1. The VI Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No. 10380
+1cc to Mr.S.Natanarajan, Advocate, S.R.No. 103568

PA(CO)
GN(11/09/2020)

C.M.A.No. 344 of 2015