

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.768 of 2012

and

MP.No.1 of 2012

The New India Assurance Co. Ltd.,
No.375, Anna Salai, 2nd Floor,
Chennai - 600 015. ... Appellant

Versus

1. M. Deepalakshmi (minor)
Rep. by her Father & NF T. Mani,
Kavankari (back side of Veterinary Hospital)
Anna Salai, Saidapet,
Chennai - 15.1st Respondent/Petitioner
2. S. Ambigapathy, S/o. K. Sakthivel
AL- 17, TNHB Qarters,
TOD Hunter Nagar, Saidapet,
Chennai- 15. ... 2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 14.11.2011 made in M.C.O.P.No. 4206 of 2009, on the file of Motor Accident Claims Tribunal (V Court of Small Causes) Chennai.

For Appellant : Mr.E.L.Veera Ravindran

For Respondents : Mr.R. Kalai Arasan (for R1)

Ex-parte - R2

JUDGMENT

The present appeal has been filed by the appellant/Insurance Company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (V Court of Small Causes) Chennai by Judgment dated 14.11.2011 passed in M.C.O.P.No. 4206 of 2009.

2.The first respondent herein is the claimant before the Tribunal. She has filed the above said Claim Petition alleging that on 06.11.2009, at about 18.00 hours, when she was crossing Anna salai road from east to west direction to TOD Hunter Nagar signal point near Jones Road Junction, the motorcycle bearing Regn.No.TN 09 AK 0442, which was driven by its driver in a rash and negligent manner and dashed against the minor claimant. Due to the impact, the minor claimant sustained grievous injuries. The second respondent herein/ first respondent before the Tribunal is the owner of the vehicle, which was insured with the appellant/ Insurance company. Hence, the claimant filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation.

3.Upon consideration of both oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent manner of driving of the driver of the offending vehicle. Based upon the medical evidence of PW.2/Doctor, who had issued Ex.P9/Disability certificate read along with Ex.P3 & P5/Discharge summaries from the two Government Hospitals, the Tribunal has assessed the disability of the claimant at 40% and also taking into consideration the nature of the injuries as categorically found that it is functional disability, adopted multiplier method and fixed the notional income at Rs.3,000/- per month and fixed the loss of earnings at Rs.2,16,000/- ($\text{Rs.3000} \times 12 \times 15 \times 40\%$). In addition to the above, the Tribunal awarded amounts under the heads of pain and suffering, medical expenses, extra-nourishment, transport to hospital, damages to clothes, mental agony and attender charges and awarded the total compensation of Rs.5,08,000/-.

4.Aggrrieved against the award passed by the Tribunal, the Insurance company has preferred this appeal before this Court.

5.The learned counsel appearing for the first respondent/ Claimant submitted that as against the Tribunal's award, the claimant herein had filed Civil Miscellaneous Appeal in CMA.No.1083 of 2012, seeking enhancement of compensation, in which, it was held that the accident had taken place due to rash and negligent driving of the offending vehicle and this Court modified and enhanced the award amount from Rs.5,08,000/- to Rs.6,00,000/- and directed the Insurance company to deposit the compensation amount in a fixed deposit until claimant attains majority and permitted her father to withdraw the interest to meet the needs of the minor child.

6.I have heard both sides and perused the materials available on record.

7.The learned counsel for the claimant/first respondent submitted that as against the very same award in MCOP No. 4206 of 2009, on the file of V Small Causes Court, Chennai, the claimant has preferred CMA.No.1083 of 2012 before this Court and sought enhancement of the compensation. By Judgment dated 30.08.2012, this Court allowed the appeal and enhanced the compensation amount from Rs.5,08,000/- to Rs.6,00,000/-.

8.The learned counsel for the appellant/Insurance company has submitted that the award amount has been enhanced by this Court in the appeal and the Insurance Company has also deposited the entire amount along with accrued interest before the Tribunal.

9.In view of the above said submission, there is nothing survives for adjudication in this appeal filed by the insurance company. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(V Court of Small Causes) Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to M/s.N.M.Muthurajan, Advocate Sr.26086
+2cc to Mrs.Elveera Ravindran, Advocate Sr.24560, 20818

CMA No.768 of 2012

rsi[co]
srg 22/10/2019