

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.2258 OF 2014

Niraimathi

...Appellant/Claimant

(sole appellant declared as major vide  
court order dated 19.09.2019 made in  
CMA.No.2258 of 14 as per memo dated 19.09.2019)

vs.

1.Sulthan Moideen Abdul Kadar

2.S.Mohamed Sadique

3.New India Assurance Co. Ltd.,  
Rep.by its Branch Manager,  
149, Bharathiar road,  
Karaikal.

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 31.08.2007 passed in MCOP.No.60 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Court at Karaikal, Puducherry.

For Appellant : Ms.N.V.Pressanna

For Respondents : Mr.J.Chandran for R3  
No appearance for R1 and R2

JUDGMENT

The appellant is the claimant in MCOP.No.60 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Court at Karaikal. Since the claimant was a minor on the date of filing of the claim petition, she was represented by her father M.Senthilkumar. The claim petition was filed under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by the claimant in a road accident that took place on 06.09.2006.

2. The case of the claimant is that on 06.09.2006, she was returning from SRVS National School, Karaikal to her house in an auto bearing Registration No. PY 02 C 1877. When the auto was nearing M.O.H. Petrol Bunk, Karaikal, the driver of the auto drove the vehicle rashly and negligently and applied sudden brake, as a result of which, she was thrown out and sustained injuries all over her body. According to the claimant, the rash and negligent driving of the driver of the auto bearing Registration No. PY 02 C 1877 belonging to the second respondent was the cause of the accident and that since, the said auto was insured with the third respondent / Insurance Company, both the owner and the insurer are jointly and severally liable to pay compensation to her.

3. The first and second respondents remained absent before the Tribunal and therefore, they were set ex-parte. The third respondent, New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal/ Additional District Judge, Karaikal after analysing the evidence on record, awarded a compensation of Rs.21,206/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Ms.N.V.Pressanna, learned counsel appearing for the appellant/claimant contended that though the claimant had sustained head injury, the Tribunal had awarded a very meagre amount of Rs.21,206/- as compensation. Her further contention is that no amount was awarded under the head "pain and sufferings", especially, when the claimant was aged eight years on the date of the accident. Therefore, she prayed for enhancement of compensation.

5. Per contra, Mr.J.Chandran, learned counsel appearing for the third respondent/New India Assurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

6. The award passed by the Tribunal is extracted hereunder:

| S.No. | Head                             | Amount granted by the Tribunal |
|-------|----------------------------------|--------------------------------|
| 1.    | Forced traumatic stress disorder | Rs.2,000/-                     |
| 2.    | Transportation                   | Rs.6,150/-                     |
| 3.    | Extra nutritious food            | Rs.1,000/-                     |
| 4.    | Medical expenses                 | Rs.11,056/-                    |
| 5.    | Damage to clothes                | Rs.1,000/-                     |
| Total |                                  | Rs.21,206/-                    |

7. It is seen from the records that the claimant had a contusion of occipital scalp and she was admitted as an inpatient in Vinodhagan Memorial Hospital, Tanjore on 07.09.2006 and discharged on 14.09.2006. However, the CT scan of brain shows that no intra cranial contusion or oedema was found and the X-ray of cervical spine was also found to be normal. Considering the age of the claimant, awarding a sum of Rs.15,000/- towards "pain and sufferings" and Rs.2,000/- towards "attender's charges" in addition to the award passed by the Tribunal would meet the ends of justice. Apart from the said amount, the claimant is also entitled to a sum of Rs.5,000/- towards "extra nourishment" and Rs.10,000/- towards "transportation". The award passed by this court under various heads is extracted hereunder:

| S. No. | Head                | Amount granted by this Court |
|--------|---------------------|------------------------------|
| 1.     | Pain and sufferings | Rs.15,000/-                  |
| 2.     | Transportation      | Rs.10,000/-                  |
| 3.     | Extra nourishment   | Rs. 5,000/-                  |
| 4.     | Medical expenses    | Rs.11,056/-                  |
| 5.     | Attender's charges  | Rs. 2,000/-                  |
| 6.     | Damage to clothes   | Rs. 1,000/-                  |
| Total  |                     | Rs.44,056/-                  |

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.21,206/- to Rs.44,056/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.21,206/- to Rs.44,056/-.

(iii) The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The third respondent/New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.44,056/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.60 of 2007 on the file of the Motor Accidents Claims Tribunal/Additional District Court at Karaikal within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following due process of law.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,  
The Additional District Court,  
Karaikal.
2. The Section Officer,  
VR Section, High Court,  
Madras-104.

+1cc to Mr.J.Chandran , Advocate, S.R.No.81094  
+1cc to M/s.Sai & Bharath, Advocate, S.R.No.80605

CMA.No.2258 of 2014

VBA(CO)  
CS/03/06/2020