

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.519 of 2014

Minor Janani

Rep. by her natural guardian and
Father Jothibasu.

... Appellant/Petitioner

Vs.

1. S.Saroja

2. The Branch Manager,
The United India Insurance Company Ltd.,
No.123A, Mayiladuthurai No.2 Road,
Mayiladuthurai, Nagapattinam District.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 29.03.2012 passed in M.C.O.P.No.75 of 2011 on the file of Motor Accident Claims Tribunal (Tiruvarur Sub-Court), Tiruvarur.

For Appellant : Mr.M.Thamizhavel

For R2 : Mr.S.Arunkumar

R1 - Served - No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.03.2012 made in M.C.O.P.No.75 of 2011 on the file of the Sub-Court (Motor Accident Claims Tribunal), Tiruvarur.

2. The case of the appellant is that on 30.01.2011 at about 1.30 p.m., while she was traveling in a Mahindra Van bearing Reg. No.TN-02-J-0571 belonged to the first respondent from East towards West on the Nagore to Thittacheri Main Road, the driver of the Van drove the Van in a rash and negligent manner and

dashed against one electric pole which was on the right side of the road. Due to this accident, she was sustained injuries all over her bodies and fracture on her right hand fingers and left side shoulder and head. Immediately she was taken to Tiruvarur Medical Centre and admitted as inpatient from 30.01.2011, there she took treatment up to 25.02.2011. In-spite of the treatment, she became permanently disabled and suffered from Loss of Income. Hence, she filed a petition before the Sub Judge (Motor Accident Claims Tribunal), Tiruvarur, claiming Rs.4,00,000/- as compensation from the first respondent as she is the owner of the vehicle involved in the accident.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that the appellant has to strictly prove that the vehicle involved in the accident was insured with them on the date of accident and also the driver of the vehicle was having valid driving licence at the time of accident. Further, it has been stated that the alleged disability, age, occupation and income of the appellant are not correct and the amount of compensation claimed is also very high.

4. The Sub-Judge (Motor Accident Claims Tribunal), Tiruvarur, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.73,843/- as compensation to her as given below :

S.No.	Description	Amount
1.	Pain & Sufferings	35,000
2.	Medical Expenses	20,843
3.	Future Medical Expenses	15,000
4.	Transport Expenses	2,000
5.	Damages to clothes and others	1,000
	Total	73,843/-

5. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal erroneously passed the award without considering the evidence and the documents filed by her and also the award passed by the Tribunal is very meager and insufficient.

6. On perusal of the Judgment and Decree dated 29.03.2012 made in M.C.O.P.No.75 of 2011 on the file of the Sub-Court (Motor Accident Claims Tribunal), Tiruvarur, it is observed that the appellant in order to prove the negligent act of the first respondent's driver marked certain documents before the Tribunal, and only based on which, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent's driver. Further,

it is observed that one Dr.Ramachandran was examined as PW3 on the side of the appellant and deposed that the appellant has sustained severe injuries on his left hand metacarpal bone and due to which, she has incurred 20% permanent disability. Similarly, one Dr.Swaminathan was examined as PW4 on the side of the appellant and deposed that when he examined the appellant, he found that the appellant was operated on his head due to the injuries and has incurred 30% permanent disability. The Tribunal has considered the deposition of both the doctors, but has omitted to award amount under the head of permanent disability and hence this Court is inclined to award the same. On considering the deposition of the doctors who examined the appellant, definitely the appellant would have incurred 35% permanent disability due to the injuries sustained and the treatment made to her and hence the same is hereby fixed and a sum of Rs.70,000/- i.e. Rs.2,000/- per percentage is awarded under the said head.

7. It is further observed from the award passed by the Court below that the sum of Rs.35,000/- awarded under the head of Pain & Sufferings is found to be excessive and hence the same is hereby reduced to Rs.10,000/-. The sum of Rs.2,000/- awarded under the head of Transport Expenses and the sum of Rs.1,000/- awarded under the head of Damages to belongings are found to be meager and the same are hereby enhanced at Rs.5,000/- for Transport Expenses and Rs.2,000/- for Damages to belongings. It is also observed that the Tribunal has not awarded any amount under heads of Attender's Charge. During the period of treatment, the appellant definitely would have spent some amount for Attender and hence a sum of Rs.5,000/- is awarded under the said head. Moreover, it is observed that the Tribunal has not awarded any amount under the head of Future Amenities. As the appellant being a girl is entitled for the same and hence a sum of Rs.50,000/- is awarded under the said head. Except the above said heads, the sum awarded under all other heads i.e. Rs.20,843/- for Medical Expenses and Rs.15,000/- for Future Medical Expenses was carefully considered and reasonably awarded by the Tribunal and hence the same is hereby confirmed.

8. In view of the above observations, the compensation awarded by the Tribunal is modified as follows :

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Permanent Disability	-	70,000	Granted
2.	Pain & Sufferings	35,000	10,000	Reduced

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
3.	Medical Expenses	20,843	20,843	Confirmed
4.	Transport Expenses	2,000	5,000	Enhanced
5.	Attender's Charge	-	5,000	Granted
6.	Damages to belongings	1,000	2,000	Enhanced
7.	Future Medical Expenses	15,000	15,000	Confirmed
8.	Future Amenities	-	50,000	Granted
	Total	73,843	1,77,843	Enhanced by 1,04,000/-

9. The interest given by the Tribunal at the rate of 7.5% per annum is very high and it has to be modified as 6% per annum. Accordingly, the rate of interest is hereby reduced as 6% per annum.

10. As insurer of the first respondent's vehicle, the second respondent is directed to deposit the said amount of Rs.1,77,843/- with interest at the rate of 6% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. As the appellant is being a minor, the award amount shall be deposited in a fixed deposit in any one of the nationalized banks till she attains majority. After the appellant becomes major, she is permitted to withdraw the entire award amount along with interests and costs by filing a formal petition before the Tribunal, less the amount if any, already withdrawn. Necessary court fee has to be by the appellant, if any.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1. The Sub-Court (Motor Accident Claims Tribunal), Tiruvarur.

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

+1 cc to M/s.M.Thamizhavel , Advocate Sr.No. 104250

+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 104170

C.M.A.No.519 of 2014

PA (CO)
RMP (21/01/2021)



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