

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1291 of 2006
and
C.M.P.No.5478 of 2006
(Through Video Conferencing)

The New India Assurance Co. Ltd.,
Chennai. Appellant

Vs.

1. Minor Saranya
Represented by Guardian
Father Rajaram,
Daughter of Rajaram,
Karapattu Village,
Iruvelpattu Post,
Villupuram Taluk.

2. R.Krishnamoorthy Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.739 of 2002, dated 22.02.2005, on the file of the Motor Accidents Claims Tribunal, Second Additional Subordinate Judge, Villupuram.

For Appellant : Mr.J.Chandran

For Respondents : Service awaited

JUDGMENT

The Insurance Company is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 22.02.2005 passed by the Motor Accidents Claims Tribunal (Second Additional Subordinate Judge, Villupuram) in M.C.O.P.No.739 of 2002.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,77,191/- together with interest at 9% per annum from the date of filing of the claim petition (06.11.2002), till the date of payment (22.02.2005), to the 1st respondent/claimant.

3. In this appeal, the Appellant Insurance Company has questioned the quantum of compensation awarded to the first respondent/claimant. It is stated that the Court ought to have summoned the injured who was aged about 16 years who would have attained the age of maturity/majority at the time of trial and consequently failed to see that non-production and non-examination of the injured disentitled her to the compensation. It is further submitted that the Tribunal erred in taking note of the contradiction elicited during cross-examination of P.W.2, who admitted that the fracture was rejoined without any mal-union as per X-Ray in Ex.A.13.

4. Heard, Mr.J.Chandran, learned counsel appearing for the appellant. Though notice was ordered on the respondents, it has not been served despite several attempts were made by the appellant Insurance Company.

5. The records were verified and since no adverse orders are proposed to be passed against the first respondent/claimant who was minor at the time of the accident, I am inclined to pass this order in absence of proper service of notice on the first respondent/claimant. The first respondent/claimant met with an accident on 27.07.2002 at about 05.30 p.m. It was stated that on 27.07.2002, the first respondent/claimant was riding a bicycle on the left side of the road when the lorry insured with the appellant Insurance Company came from behind and knocked her down and therefore she was injured. Thereafter, she was admitted to Jipmer Hospital, Pondicherry for treatment. Thereafter, she was admitted in the Government General Hospital, Villupuram and later in a private Hospital as an inpatient for 15 days.

6. The case of the first respondent/claimant before the Tribunal was that due to the accident, she had suffered following injuries:-

- (i) Fracture of Right shaft of Femur
- (ii) Head injury coma stage
- (iii) Lacerated right foot
- (iv) X-ray Trauma
- (v) Orif (RF) Femur
- (vi) A saturated wound over the right parietal region of 4 c.m
- (vii) Compound fracture of left thigh multiple and grievous injuries on all over her body

Evidences also show that she also had to undergo operation, the details of which are as follows:-

Operation Details:-

Site of Rt femur exposed, site of right femur obliged and fixed. Blood dep fixation at the time of discharge she

could not speech and inability to walk till time, she was unable to walk and always bed ridden. Every two days, she is come and take treatment as an out patient.

7. It was submitted that due to the accident, the first respondent/claimant could not continue her studies and that the same impacted the prospect of her getting married, progress, aim and achievement. Accordingly, a sum of Rs.4,00,000/- was claimed as compensation. The claim petition was preferred by her father as guardian/next friend. At the time of accident and claim petition, the first respondent/claimant was studying 8th standard and was said to be aged about 16 years.

8. The Tribunal after considering the evidences on record has awarded the aforesaid compensation under the following heads:-

(a) 40% disability	= Rs. 50,000/-
(b) Simple Injuries	= Rs. 8,000/-
(c) Loss of future income	= Rs. 50,000/-
(d) Medical expenses	= Rs. 34,191/-
(e) Impact on marital life	= Rs. 15,000/-
(f) Pain, suffering & depression/mental agony	= Rs. 15,000/-
(g) Extra nourishment	= Rs. 5,000/-

Total	= Rs. 1,77,191/-

9. In my view, the Tribunal has awarded a just compensation considering the nature of injuries suffered by the first respondent/claimant. I do not find any reasons to interfere either with the assessment of disability and/or the amount of compensation awarded by the Tribunal to the first respondent/claimant.

10. Though the claim amount was for a sum of Rs.4,00,000/-, the first respondent/claimant appears to be satisfied with the compensation of Rs.1,77,191/-. Even otherwise, subsequent development of law is applied to the case, the first respondent/claimant may be entitled to a slightly higher compensation, if the first respondent/claimant had filed a cross appeal. It appears that the first respondent/claimant is satisfied with the compensation awarded by the Tribunal.

11. If the amount of compensation awarded by the Tribunal has not been deposited by the appellant Insurance Company, it is directed to deposit the same together with interest at 9% per annum from the date of filing of the claim petition till the

date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of the copy of this Judgment.

12. On deposit of the award amount, the first respondent/claimant is entitled to withdraw the same together with interest as directed by the Tribunal, less any amount already withdrawn, by filing suitable application before Tribunal.

13. This Civil Miscellaneous Appeal is dismissed with the above observation and direction. No cost. Consequently, connected Civil Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
Second Additional Subordinate Judge,
Villupuram.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.J.Chandran, Advocate Sr.27309

C.M.A.No.1291 of 2006

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and
C.M.P.No.5478 of 2006

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