

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2804 of 2006

Minor.K.Dheepa

.. Appellant/Claimant

(Represented by her father and
natural guardian, S.Kasi)

Vs.

1.R.Sivakumar
(R1 - given up)

2. M/s.Raju Motor Service,
rep by its Proprietor/Manager,
31-A, Karunanithi Nagar,
Ramanathapuram Post,
Coimbatore - 45.

3.M/s.National Insurance Company Limited,
Branch Office,
1152/53, Trichy Main Road,
Coimbatore - 41.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.06.2006 made in M.C.O.P.No.167 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Erode.

For Appellant : Mr.P.ParthiKannan
for Mr.S.Kaithamalaikumaran

For R2 : No appearance

For R3 : Ms.N.B.Surekha

R1 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the portion of the award dismissing the claim petition as against the 3rd respondent and for enhancement of compensation granted by the award dated 26.06.2006 made in M.C.O.P.No.167 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.167 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Erode. She filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.05.2003.

3.According to the appellant, on 04.05.2003 at about 18.00 hours, while she was standing in front of her house after attending her natural call, the 1st respondent, who is the driver of the bus belonging to the 2nd respondent and insured with the 3rd respondent drove the same on the Ukkadam - Kannampalayam road near Jayalakshmi mill in a rash and negligent manner and dashed against the appellant and caused the accident. Due to the said impact, the appellant was thrown away and the bus ran over her right leg. Therefore, the appellant was immediately admitted in CMC Hospital, Coimbatore. At the time of accident, the appellant was aged 2 ½ years. Therefore, she filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her against the respondents 1 to 3, being the driver, owner and insurer of the bus.

4.The respondents 1 and 2, the driver and owner of the bus remained exparte before the Tribunal.

5.The 3rd respondent-Insurance Company, the insurer of the bus belonging to the 2nd respondent filed counter statement and denied all the averments made by the appellant. According to the 3rd respondent-Insurance Company, the accident did not take place due to rash and negligent driving by the driver of the bus belonging to the 2nd respondent. The appellant has to prove that the accident has occurred only due to rash and negligent driving by the 1st respondent/driver of the bus. The bus belonging to the 2nd respondent was not insured with the 3rd respondent-Insurance Company. The 3rd respondent-Insurance Company has not issued any Insurance Policy to the 2nd respondent. Therefore, the 3rd respondent-Insurance Company is not liable to pay any compensation to the appellant. The 1st respondent-driver of the bus was not possessing valid driving license at the time of accident. The 1st respondent-driver of the bus drove the bus in a moderate speed on the left side of the road observing all the

traffic rules. The appellant, all of a sudden appeared on the said road and had fallen into the bus and inspite of the best efforts taken by the 1st respondent, the accident has occurred. Therefore, the accident occurred only due to negligence on the part of the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the father of the appellant viz.,S.Kasi was examined as P.W.1, Dr.Venkatesan was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 3rd respondent-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus, the 1st respondent herein belonging to the 2nd respondent and directed the 2nd respondent-owner of the bus to pay a sum of Rs.1,60,000/- as compensation to the appellant and dismissed the claim petition as against the 3rd respondent-Insurance Company on the ground that there was no insurance policy for the 2nd respondent's bus.

8.Challenging the portion of the award dismissing the claim petition as against the 3rd respondent and for enhancement of compensation, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition as against the 3rd respondent-Insurance Company. Due to the injuries sustained by the appellant in the accident, the appellant was admitted in the hospital and her right leg above knee was amputated. She underwent plastic surgery and lost her right leg at her tender age and artificial leg has to be replaced often, till she attains the age of 20 years, due to growth. The amounts awarded by the Tribunal towards pain and sufferings is meagre. The appellant has to depend upon others for all her day to day activities. The Tribunal has not awarded any amount towards attendant charges, extra nourishment. The appellant's studies are affected and her prospects of getting a good job and her marital prospects are reduced and prayed for setting aside the portion of the award dismissing the claim petition as against the 3rd respondent-Insurance Company and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the 3rd respondent-Insurance Company in the counter statement itself denied that the offending vehicle was insured with them. The appellant failed to furnish the details of the Insurance Policy issued by

the 3rd respondent-Insurance Company and failed to prove the existence of Insurance Policy at the time of accident. In any event, the quantum of compensation awarded by the Tribunal is highly excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

12. From the materials available on record, it is seen that it is the case of the appellant that the offending vehicle was insured with the 3rd respondent-Insurance Company at the time of accident. But she has not furnished the Policy Number of the 2nd respondent's bus in the claim petition, except mentioning the name of the 3rd respondent-Insurance Company. The appellant filed Ex.P3/Motor Vehicle Inspector's report, wherein it has been stated that the offending vehicle was insured with the 3rd respondent-Insurance Company for the period from 17.03.2003 to 12.02.2004. The 3rd respondent-Insurance Company has taken a stand in the counter statement that the offending vehicle was not insured with them. In Ex.P3/Motor Vehicle Inspector's report, the period of insurance and 3rd respondent's name was mentioned. The 3rd respondent-Insurance Company has not let in any evidence to show that they verified with their records and no policy for the offending vehicle was issued for that period. The Tribunal took note of Ex.P3/Motor Vehicle Inspector's report with regard to policy mentioned therein, but failed to consider that 3rd respondent-Insurance Company did not let in any evidence to show that no such policy was issued by them and disproved the Motor Vehicle Inspector's report. For the above reason, the portion of the award dismissing the claim petition as against the 3rd respondent-Insurance Company is liable to be set aside and it is hereby set aside. The 3rd respondent-Insurance Company, being the insurer of the bus belonging to the 2nd respondent is liable to pay compensation to the appellant.

13. As far as quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.60,000/- for 60% disability as assessed by P.W.2/Doctor, who issued Ex.P9/disability certificate to that effect, Rs.25,000/- towards pain and sufferings, Rs.75,000/- towards loss of marital prospects, mental agony and future medical expenses. The said amount is meagre. Therefore, the lumpsum amount of Rs.75,000/- awarded by the Tribunal towards loss of marital prospects, mental agony and future medical prospects are set aside and the appellant is entitled to compensation for each head separately. Considering the age of the appellant as 3 years at the time of accident, the nature of injuries, disability, appellant's right leg above knee was amputated and that appellant will be suffering permanent disability throughout her life, the amounts awarded by the

Tribunal are meagre and has to be enhanced. The appellant was aged 3 years at the time of accident and she is a non-earning member. As per the IInd Schedule, her annual income is fixed at Rs.15,000/- and the multiplier applicable is '15'. Thus, the compensation awarded by the Tribunal for 60% disability is enhanced to Rs.1,35,000/- [Rs.15,000/- X 15 X 60/100]. Due to the injuries sustained by her in the accident, the appellant underwent surgery on her right leg and her right leg above knee was amputated. P.W.2/Doctor has deposed that appellant requires artificial leg. He further deposed that as the appellant grows, the artificial leg has to be changed till the appellant attains the age of 20 years. Due to the amputation and disability, the appellant's studies and future prospects will be affected. She cannot have normal student's life and cannot participate in the extra curricular activities like sports, etc,. Her prospects of getting good job and marital prospects will be reduced. Being a young girl, she would have suffered much pain and would have taken extra nourishment. In view of the above, the appellant is entitled to a sum of Rs.2,00,000/- towards artificial leg, Rs.50,000/- each towards attendant charges, loss of amenities and extra nourishment, Rs.75,000/- towards loss of studies, Rs.1,00,000/- towards loss of marital prospects, Rs.5,000/- towards transportation. A meagre sum of Rs.25,000/- awarded by the Tribunal towards pain and sufferings is enhanced to Rs.50,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	60,000/-	1,35,000/-	Enhanced
2.	Pain and sufferings	25,000/-	50,000/-	Enhanced
3.	Loss of marital prospects, mental agony and future medical expenses	75,000/-	-	Set aside
4.	Loss of marital prospects	-	1,00,000/-	Granted
5.	Loss of amenities	-	50,000/-	Granted
6.	Artificial leg	-	2,00,000/-	Granted
7.	Attendant charges	-	50,000/-	Granted
8.	Loss of studies	-	75,000/-	Granted
9.	Extra nourishment	-	50,000/-	Granted

10	Transportation	-	5,000/-	Granted
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	Total	Rs.1,60,000/-	Rs.7,15,000/-	enhanced by Rs.5,55,000/-

14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,60,000/- is hereby enhanced to Rs.7,15,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with 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.167 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Erode. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor appellant attains majority. On such deposit made by the Tribunal, the father of the minor appellant viz., S.Kasi is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant, till the minor appellant attains majority, by filing necessary applications before the Tribunal. The father of the minor appellant is entitled for payment of amounts for purchase of artificial leg from time to time by filing application with supporting documents. The appellant is directed to pay the necessary Court fee for the enhanced award amount now determined by this Court. The 2nd respondent-owner of the bus is permitted to withdraw the award amount, if any, lying in the deposit to the credit of M.C.O.P.No.167 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Erode, if the entire amount has already been deposited by the 2nd respondent-owner of the bus. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-IV)

//True copy//

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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Erode.

Copy To

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

+1cc to Mr.S.Kaithamalaikumaran, Advocate SR.No.21746

+1cc to Ms.N.B.Surekha, Advocate SR.No.22053

C.M.A.No.2804 of 2006

VG I (CO)
GMY (06/05/2021)



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