

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1219 of 2015

The Branch Manager,
M/s.New India Assurance Co. Ltd.,
No.110, Gandhi Road,
Arni.

... Appellant/2nd Respondent

Vs.

1.Minor.Kanimozhi,
(Minor rep. by her mother
Tmt.Vijayakumari)

... 1st Respondent/Claimant

2.S.Chitra

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.09.2014 made in M.C.O.P.No.49 of 2008 on the file of the Motor Accident Claims Tribunal, Arni, Tiruvannamalai.

For Appellants : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Assurance Company, challenging the award dated 15.09.2014 made in M.C.O.P.No.49 of 2008 on the file of the Motor Accident Claims Tribunal, Arni at Tiruvannamalai.

2.The appellant is the second respondent in M.C.O.P.No.49 of 2008 on the file of the Motor Accident Claims Tribunal, Arni at Tiruvannamalai. The first respondent filed the said claim petition, claiming a sum of Rs.50,000/- as compensation for the injuries sustained by her in the accident that took place on 01.06.2007.

3.According to the first respondent, on the date of accident i.e., on 01.06.2007 at 01.30 p.m., while the first respondent was travelling along with 18 persons for a temple festival in a mini door four wheeler belonging to the second respondent, on Vazhiyur Kootroad to Chinnaputhur road, near 5-Puthur Kootroad, the driver of the said vehicle drove the same in a rash and negligent manner, lost his control and hence the

vehicle rolled down on the right side of the road. Due to the said accident, the first respondent and others sustained grievous injuries. Hence, the first respondent/claimant filed claim petition claiming compensation against the second respondent and appellant/Insurance Company being the owner and insurer of the offending vehicle respectively.

4.The second respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that at the time of accident, the driver of the vehicle did not possess valid driving license and R.C.Permit. The alleged mini door van was not insured with the appellant at the time of accident and it was subsequently renewed. Hence, the appellant is not liable to pay any compensation to the first respondent. The first respondent has to prove the age, income and nature of injuries sustained by her. In any event the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the mother of the first respondent, Mrs.Vijyakumari was examined as P.W.1 and 4 documents were marked as Exs.P1 to P4. On the side of the appellant/Insurance Company, one Manivannan was examined as RW.1, but no document was marked.

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 mini door vehicle belonging to the second respondent and insured with the appellant and directed the appellant as well as the second respondent to pay a sum of Rs.15,000/- as compensation to the first respondent.

8.Challenging the said award dated 15.09.2014 made in M.C.O.P.No.49 of 2008 granting compensation to the first respondent, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the first respondent had travelled as a passenger in the goods vehicle, she did not travel along with goods. The Tribunal erred in fixing the liability on the appellant and directed to pay the compensation to the first respondent, when the appellant is not liable to pay the compensation to gratuitous passenger and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the

appellant/Insurance Company and perused the entire materials on record.

11.It is the contention of the first respondent that she had travelled in the mini door four wheeler, for a temple festival. The appellant in the counter statement filed before the Tribunal did not take a stand that the first respondent travelled as a gratuitous passenger and the appellant is not liable to pay compensation. Having failed to plead in the counter statement, it is not open to the appellant to raise such a plea now. Further, the first respondent was a minor at the time of the accident and the Tribunal, after considering the oral and documentary evidence let in by the first respondent, has awarded a meagre sum of Rs.15,000/- as compensation. For the above reason, the award of the Tribunal is not interfered by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.15,000/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is confirmed. The appellant and the second respondent are directed to deposit the award amount, along with interest and costs, less the amount already deposited, if any, 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.49 of 2008 on the file of the Motor Accidents Claims Tribunal, Arni, Tiruvannamalai. On such deposit, the award amount of the minor first respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The mother of the minor first respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor first respondent. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vkr
To

1.The Motor Accident Claims Tribunal,
Arni, Tiruvannamalai.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 6866

C.M.A.No.1219 of 2015

CP(CO)
GN(18/12/2020)