

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1640 of 2015

and

M.P.No.1 of 2015

M/s.The New India Assurance
Company Limited,
Srivari Shopping Mall,
Near A.R.R.S. Theatre,
Meyyanur,
Salem - 4.

... Appellant /2nd Respondent

Vs.

1.Minor. Deepika
(Rep by her next friend and
guardian mother Mrs.Sangeetha) ...1st Respondent/Petitioner

2.R.Dharmalingam ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.03.2015 made in M.C.O.P.No.1016 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court-II, Salem.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.A.Nagarathinam

R2 : Ex parte in the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 13.03.2015 made in M.C.O.P.No.1016 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court-II, Salem.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1016 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court-II, Salem. The 1st respondent filed

the 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 05.06.2012.

3. According to the 1st respondent, while she was riding in her cycle along Panamadai to Yethapur to Thumbal Road, near Konandhammal Koil, a motorcycle ridden by its rider in a rash and negligent manner, dashed against the 1st respondent's cycle and caused the accident. The 2nd respondent is the owner and appellant is the insurer of the motorcycle. In the accident, the 1st respondent sustained grievous injuries all over her body. Therefore, the 1st respondent has filed the above claim petition claiming compensation.

4. The 2nd respondent, owner of the motorcycle remained ex parte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the rider of the motorcycle belonging to the 2nd respondent had no valid and effective license at the time of accident. Hence, there is a violation of policy and hence the appellant is not liable to pay any compensation to the 1st respondent.

6. Before the Tribunal, the mother of the 1st respondent, examined herself as P.W.1 and one Dr. Ramakrishnan was examined as P.W.2 and marked twelve documents as Exs.P1 to P12. No oral and documentary evidence was let in on the side of the appellant.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.7,51,000/- as compensation to the 1st respondent.

8. Against the said award dated 13.03.2015 made in M.C.O.P.No.1016 of 2012, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent has not stated the class in which the 1st respondent was studying at the time of the accident. The 1st respondent has failed to file the documents with regard to the injuries. P.W.2/Doctor is not the Doctor who treated the 1st respondent. The disability assessed by P.W.2/Doctor is not supported by any medical documents and the

percentage of disability assessed by P.W.2/Doctor is on the higher side. The 1st respondent was aged only 12 years and she will be cured completely. The amounts awarded by the Tribunal under different heads are excessive and prayed for allowing this appeal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation and hence prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

12.It is the contention of the 1st respondent that she sustained grievous injuries on her head and underwent surgery. Due to the injuries, she suffered headache and lost her memory power. The 1st respondent has produced Exs.P4 to P12 to prove the injuries sustained by her. She has taken treatment as in-patient in Kovai Medical Centre Hospital from 07.06.2012 to 13.07.2012. The 1st respondent examined P.W.2/Doctor to prove the nature of injuries and marked Ex.P4/wound certificate to prove the injuries. Due to the injuries, her face is disfigured. P.W.2/Doctor has assessed the disability of the 1st respondent as 35%. The Tribunal considering the above facts and relying on the judgment of the Hon'ble Apex Court, accepted the evidence of P.W.2/Doctor with regard to percentage of disability. The 1st respondent was a minor at the time of the accident. The Tribunal considering the judgment of the Hon'ble Apex Court reported in "2013 ACJ 2445 (SC)" in the case of "Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., & Another" held that if the claimant is minor, lumpsum compensation can be granted based on the percentage of disability. As per the judgment of the Hon'ble Apex Court, if the disability is above 10% and upto 30% to the whole body, Rs.3,00,000/- can be awarded and up to 60%, Rs.4,00,000/- can be awarded. In the present case, the 1st respondent suffered 35% disability but the Tribunal has granted only a sum of Rs.3,00,000/- of disability. The Tribunal ought to have awarded a sum of Rs.4,00,000/- for 35% disability suffered by the 1st respondent. In view of the compensation awarded by the Tribunal towards disability, the amounts awarded by the Tribunal under all other heads are not interfered with and the same is hereby confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.7,51,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant/Insurance Company is directed

to deposit the entire 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. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected, Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Special Subordinate Judge-II,
Motor Accident Claims Tribunal,
Salem.

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

+1cc to M/s.J.Michael Visuvasam, Advocate Sr.1894

+1cc to Mr.A.Nagarathinam, Advocate Sr.1404

C.M.A.No.1640 of 2015

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