

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2539 of 2013

Minor Gomathi

Represented by her mother Poongodi ...Petitioner/Appellant

vs.

1. Ponnusamy
2. Iffco Tokio General Insurance Co. Ltd.,
195, T.V.Samy Road,
R.S.Puram,
Coimbatore ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree passed by the Motor Accident Claims Tribunal, Dharapuram Court Judge, at Dharapuram in MCOP.No.446 of 2009 dated 03.10.2012.

For Appellant : Mr.N.S.Sivakumar

For Respondent 1 : Mr.Ramaraaj
for M/s.M.Guruprasad

For Respondent 2 : Mr.N.Vijayaraghavan

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.10.2012 passed by the Motor Accident Claims Tribunal, Dharapuram in MCOP.No.446 of 2009.

2. The Appellant/claimant sustained injuries as a result of an accident which took place on 11.12.2008 caused by a vehicle owned by the first respondent and insured with the second respondent insurance company.

3. The Appellant/claimant who was a minor at the time of the accident preferred a claim before the Motor Accident Claims

Tribunal seeking a compensation of Rs.2,00,000/- from the respondents.

4. The Tribunal under the impugned award dated 03.10.2012 exonerated the second respondent insurance company but directed the first respondent to pay the Appellant/claimant a sum of Rs.64,929/- together with interest and cost.

5. The Appellant/claimant being unsatisfied with the quantum of compensation awarded by the Tribunal and also aggrieved by the findings of the Tribunal exonerating the second respondent insurance company from any liability has preferred this Appeal.

6. Heard Mr.N.S.Sivakumar, learned counsel for the Appellant, Mr.Ramaraaj learned counsel representing Mr.M.Guruprasad learned counsel for the first respondent and Mr.N.Vijayaraghavan learned counsel for the second respondent.

7. The first contention raised by the Appellant is that the second respondent/insurance company ought not to have been exonerated from liability, since it is a settled law that non-possession of driving licence by the driver of the insured vehicle cannot exonerate the insurance company and the second contention raised by the Appellant/claimant is that the quantum of compensation awarded by the Tribunal under the impugned award is meagre and it has to be enhanced.

8. Insofar as the first contention raised by the Appellant is concerned, as seen from the evidence available on record and as recorded by the Tribunal itself under the impugned award, the first respondent who is the owner and rider of the two wheeler himself has deposed that on the date of the accident, he did not possess a valid two wheeler driving licence and was possessing only four wheeler driving licence. He has admitted in his deposition that only in the year 2009, he obtained two wheeler driving licence whereas the accident happened on 11.12.2008 itself. However, the Tribunal has erroneously exonerated the second respondent insurance company absolutely from any liability. As per settled law, when the driver does not possess a valid driving licence, the insurance company ought to have been directed to pay the compensation amount and recover the same from the owner of the vehicle (insured). Instead, the second respondent has been totally exonerated from any liability by the Tribunal. This erroneous finding is set aside by this Court in view of the settled position of law and pay and recovery rights are granted to the claimants.

9. With regard to the second contention raised by the Appellant/claimant that the quantum of compensation awarded by

the Tribunal is meagre is concerned, this Court has examined the materials and evidence available on record.

10. The Appellant/claimant is a twelve year old student and he has sustained head injury namely Occipital bone injury in the head. The mother of the Appellant has deposed before the Tribunal that due to the head injury sustained by the Appellant/claimant, the minor Appellant girl has suffered loss of memory. The Appellant/claimant was hospitalised for a period of four days as seen from Ex.P4-discharge summary issued by the hospital. The period of the hospitalisation has also not been disputed by the second respondent insurance company before the Tribunal.

11. Before the Tribunal, the Appellant/claimant has filed nine documents which were marked as Ex.P1 to Ex.P9 and two witnesses were examined on his side, namely his mother as PW1 and the Doctor who examined him as PW2. On the side of the second respondent, insurance company, four documents were filed which were marked as Ex.R1 to Ex.R4 and four witnesses were examined namely RW1 to RW4.

12. The Doctor who examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 25% as per Ex.P8. However, the Tribunal without any basis has reduced the disability to 23%. This Court is in agreement with the assessment of disability by the Doctor and fixes the disability of the Appellant/claimant at 25%.

13. The accident happened on 11.12.2008. The Tribunal has awarded disability compensation of Rs.46,000/- to the Appellant/claimant calculated at Rs.2,000/- per percentage of disability for 23% disability. This Court after giving due consideration to the nature of the head injury sustained by the Appellant/claimant who is a minor and the consequential disabilities she had suffered as per the deposition of her mother (PW1), is of the considered view that the disability compensation awarded by the Tribunal has to be enhanced to Rs.75,000/- calculated at Rs.3,000/- per percentage of disability for 25% disability.

14. The Tribunal has also awarded only a meagre compensation towards transportation cost, extra nourishment charges and pain and suffering which has to be necessarily enhanced by this Court, considering the nature of the head injury. Accordingly, the same is enhanced to Rs.5,000/-, Rs.5,000/- and Rs.20,000/- respectively by this Court.

15. The Tribunal has not awarded any compensation towards loss of amenities and attender charges which the

Appellant/claimant is legally entitled to. Accordingly, this Court awards a sum of Rs.10,000/- towards loss of amenities and Rs.5,000/- towards attender charges to the Appellant/claimant.

16. Insofar as the compensation awarded by the Tribunal towards reimbursement of medical expenses is concerned, the same is confirmed as it is supported by the medical bills Ex.P7 and the Appellant/claimant is not entitled for any future medical expenses as no evidence was placed either before the Tribunal or before this Court.

17. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Disability	46,000/- (23 x 2,000)	75,000/- (25 x 3000)
Transportation	1,000/-	5,000/-
Extra nourishment	3,000/-	5,000/-
Pain and suffering	10,000/-	20,000/-
Medical Expenses	4,929/-	4,929/-
Attender charges	---	5,000/-
Loss of amenities	---	10,000/-
Total	64,929/-	1,24,929/-

Conclusion:

18. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.1,24,929/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.446 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the first respondent who is the owner of the insured vehicle. On such deposit being made, the Tribunal is directed to deposit the award amount along with accrued interest in any one of the Nationalised Bank in an interest bearing fixed deposit till she attains majority, within

a period of two weeks thereafter. Since the Appellant is a minor, her mother Poongodi is permitted to withdraw interest once in six months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
The Judge, Dharapuram.

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

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.26501

C.M.A.No.2539 of 2013

RV(06/11/2020)



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