

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1038 of 2018

and

C.M.P.No.8415 of 2018

The Manager,  
United India Insurance Company Limited,  
342-A, Post Office Street,  
N.H.Road, Avinashi - 641 654. .. Appellant/2<sup>nd</sup> Respondent

Vs.

1.Sumithra  
(declared as Major in I.A.No.1023 of 2014  
Dated 23.07.2014) ..1<sup>st</sup> Respondent/Petitioner

2.V.Saravanakumar ..2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2017 made in M.C.O.P.No.1900 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.S.Murugan

For R2 : Set exparte at Lower Court

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 27.04.2017 made in M.C.O.P.No.1900 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P.No.1900 of 2013 on the file of the Motor Accident Claims Tribunal, Special

Sub Court, Krishnagiri. The 1<sup>st</sup> respondent filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by her in the accident that took place on 15.06.2011.

3. According to the 1<sup>st</sup> respondent, on 15.06.2011, at about 13.40 hours, while she was proceeding in her bicycle on Dam Road, Nagrajapuram, the rider of the motorcycle belonging to the 2<sup>nd</sup> respondent rode the same in a rash and negligent manner, lost his control and dashed against the 1<sup>st</sup> respondent and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained multiple injuries and was taken to Government Hospital, Krishnagiri and after first aid, she was admitted in St. John's Medical College Hospital, Bangalore. At the time of accident, the 1<sup>st</sup> respondent was aged 17 years and was a +2 student. Due to the injuries sustained by her in the accident, she could not able to do any work as she was doing earlier and her education also got spoiled. Therefore, she filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation against the 2<sup>nd</sup> respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle.

4. The 2<sup>nd</sup> respondent - owner of the motorcycle remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1<sup>st</sup> respondent. According to the appellant-Insurance Company, the rider of the motorcycle belonging to the 2<sup>nd</sup> respondent was not possessing valid driving license at the time of accident. At the time of accident, the 1<sup>st</sup> respondent suddenly crossed the road with her bicycle and invited the accident. Therefore, the rider of the 2<sup>nd</sup> respondent's motorcycle was not responsible for the accident. The rider of the 2<sup>nd</sup> respondent's motorcycle appeared before the concerned RTO Office and paid fine of Rs.1,500/- for not possessing driving license at the time of accident. Therefore, the 2<sup>nd</sup> respondent violated the terms and conditions of the policy. Hence, the appellant - Insurance Company is not liable to pay any compensation to the 1<sup>st</sup> respondent. In any event, the quantum of compensation claimed by the 1<sup>st</sup> respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1<sup>st</sup> respondent examined herself as P.W.1 and 8 documents were marked as Exs.P1 to P8. On behalf of the appellant-Insurance Company, Tr.K.Kumar, Motor Vehicle

Inspector of Krishnagiri R.T.O. was examined as R.W.1 and Tr.M.Ravi, Senior Assistant in the Hosur Branch of appellant-Insurance Company was examined as R.W.2 and 3 documents were marked as Exs.R1 to R3. Disability certificate issued by the Medical Board, Krishnagiri was marked as Ex.C1.

7.The Tribunal after 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 2<sup>nd</sup> respondent and directed the appellant-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.4,15,000/- as compensation to the 1<sup>st</sup> respondent at the first instance and then recover the same from the 2<sup>nd</sup> respondent - owner of the vehicle.

8.Challenging the quantum of compensation awarded by the Tribunal dated 27.04.2017 made in M.C.O.P.No.1900 of 2013, the appellant-Insurance Company has come out with the present Civil Miscellaneous Appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding excessive sum of Rs.4,15,000/- as total compensation for 20% disability. The amount of Rs.15,000/- each awarded by the Tribunal towards pain and sufferings and loss of amenities are highly excessive. In the absence of any medical records, the Tribunal has awarded excessive sum of Rs.10,000/- towards future medical expenses. The Tribunal ought not to have granted interest at the rate of 9% per annum. The total compensation awarded by the Tribunal under different heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent contended that Krishnagiri Medical Board has examined the 1<sup>st</sup> respondent and certified that 1<sup>st</sup> respondent suffered 20% permanent disability and certified that the 1<sup>st</sup> respondent sustained grievous injuries in her genital region. The 1<sup>st</sup> respondent was aged 17 years at the time of accident and hence, a sum of Rs.1,50,000/- each awarded by the Tribunal towards pain and sufferings and loss of amenities are not excessive. The Tribunal considering the nature of injuries sustained by the 1<sup>st</sup> respondent has awarded a sum of Rs.10,000/- towards future medical expenses, which is not excessive. The Tribunal considering the entire materials on record, has awarded a total sum of Rs.4,15,000/- as compensation to the 1<sup>st</sup> respondent, which is just and reasonable and 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 1<sup>st</sup> respondent and perused the entire materials on record.

12. From the award passed by the Tribunal, it is seen that the Medical Board from Krishnagiri Government Hospital has examined the 1<sup>st</sup> respondent and certified that she suffered 20% permanent disability and also certified that her genital region is severely damaged and it would possibly result in difficulty in pregnancy and delivering baby. The Tribunal considering the same, has awarded a sum of Rs.60,000/- towards permanent disability by fixing a sum of Rs.3,000/- per percentage of disability. The accident occurred in the year 2011 and the compensation awarded by the Tribunal towards disability is proper. At the time of accident, the 1<sup>st</sup> respondent was aged 17 years and was a +2 student. The Tribunal considering the age and nature of injuries sustained by the 1<sup>st</sup> respondent, has awarded a sum of Rs.1,50,000/- each towards pain and sufferings and loss of amenities and a sum of Rs.10,000/- towards future medical expenses. Considering the nature of injuries and age of the 1<sup>st</sup> respondent, she would have suffered more pain. Therefore, the compensation awarded by the Tribunal towards pain and sufferings, loss of amenities and future medical expenses are just and reasonable. The Tribunal has not awarded any amount towards loss of marital prospects and loss of education. In such circumstances, the interest granted by the Tribunal at 9% per annum is not interfered with and the same is confirmed. The total compensation awarded by the Tribunal at Rs.4,15,000/- is just and reasonable and hence, the same does not warrant any interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.4,15,000/- awarded by the Tribunal as compensation to the 1<sup>st</sup> respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company is 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.1900 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, at the first instance and then recover the same from the 2<sup>nd</sup> respondent - owner of the motorcycle. On such deposit, the 1<sup>st</sup> respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the

amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1.The Special Subordinate Judge,  
Motor Accidents Claims Tribunal,  
Krishnagiri.

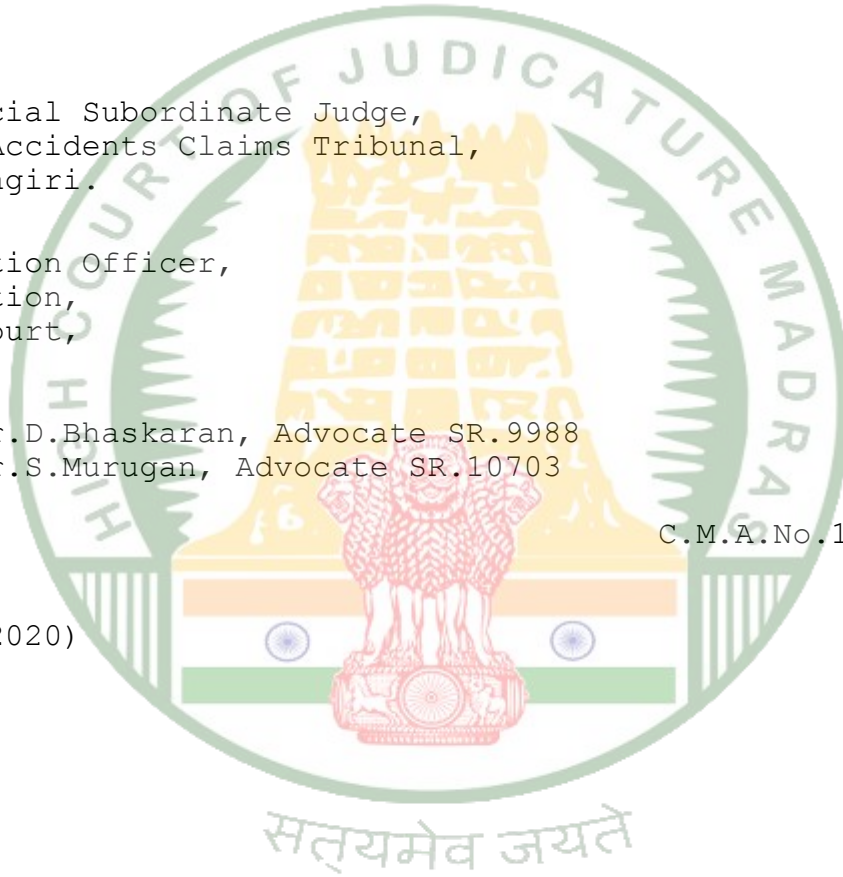
2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.9988

+1cc to Mr.S.Murugan, Advocate SR.10703

C.M.A.No.1038 of 2018

RSK (CO)  
CB (03/09/2020)



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