

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.618 of 2014

and

M.P.No.1 of 2014

United India Insurance Co. Ltd.,
Divisional Office - II,
1st Floor, 104-A,
Peramanur Main Road,
Peramanur, Salem -7.

... Appellant/2nd Respondent

Vs.

1.Minor. Santhiya
rep by next friend/Guardian
father Balasubramanian

... 1st Respondent/Claimant

2.C. Raman

...Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 04.02.2013 made in M.C.O.P.No.327 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem.

For Appellant : Mr.S. Arun Kumar

For Respondent-2 : No Appearance

For Respondent-1 : Mr.T. M. Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decree dated 04.02.2013 made in M.C.O.P.No.327 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem.

2.The case of the claimant/first respondent is that on 13.09.2007 at about 13:30 hours, when the claimant was walking in front of the Karuppur Government Higher Secondary School, a motor cycle bearing Registration No.TN-30-AZ-2823 driven by its driver in a rash and negligent manner and dashed against the first respondent. Hence she filed a claim petition before the

Tribunal seeking Rs.5,00,000/- as compensation. The Tribunal based on the available materials on record awarded Rs.1,45,213/- as compensation.

3.Challenging the said award passed by the Tribunal, the appellant has come up with this present appeal before this Court.

4.Before the Tribunal on the side of the 1st respondent four witnesses were examined viz., P.W.1 to P.W.4 and marked twelve documents viz., Ex.P1 to Ex.P12. On the side of the appellant one witness was examined viz., R.W.1 and one document was marked viz., Ex.R1.

5.The learned counsel for the appellant/Insurance Company submitted that the Tribunal has erred in directing the Insurance Company to pay the award amount to the claimant, inspite of the fact remains that the rider of the vehicle does not posses valid driving licence at the time of accident. Hence, he prays to allow this appeal.

6.The learned counsel for the first respondent submitted that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. He would further contend that the award amount is very low when compared to the injuries sustained by the first respondent in the accident.

7.Heard the learned counsel for the appellant and perused the document placed on record.

8.Though fresh notice to the 2nd respondent was ordered as early as on 28.01.2009 there is no representation for him either-in-person or through counsel.

9.With regard to negligence aspect, it is seen that P.W.1/guardian of the claimant deposed that the rider of the motor cycle is the cause for the accident. P.W.2 who is the eyewitness to the accident deposed that the accident took place only due to the negligence of the rider of the two wheeler but, during cross examination he said that he did not see the accident. Nothing was suggested in the cross examination to disbelieve the evidence of P.W.2. Therefore, based on the oral and documentary evidences, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the rider of the two wheeler. This Court is of the view that the findings of the Tribunal are very reasonable, weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed.

10.With regard to quantum based on Exs.P.2 and 3/Medical bills a sum of Rs.28,913/- was granted towards the head "Medical

expenses".

In the present case there were two disability certificates issued by two different Doctors. Hence, in order to arrive total percentage of multiple disability after applying the formulas given in manual for Doctor to evaluate permanent physical impairment, the Tribunal concluded that the percentage of disability suffered by the injured is 65%. Considering the year of accident Rs.2,000/- per percentage is determined and awarded Rs.70,000/- (Rs.2,000 x 35%) towards the head disability. As such, the amount awarded by the Tribunal under various heads are just and reasonable hence the same are hereby confirmed.

Particulars	Amount
Transport to Hospital	Rs.10,000/-
Extra Nourishment	Rs.10,000/-
Damage to clothing and materials	Rs.1,000/-
Medical Expenses	Rs.28,913/-
Pain and sufferings	Rs.25,000/-
Permanent Disability	Rs.70,000/-
X Ray charge	Rs.300/-
Total	Rs.1,45,213/-

11.In the result, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment.

12.At this juncture, it is submitted that the first respondent would have attained majority by now. Hence, on such deposit being made and an application being taken out, the Tribunal is directed to transfer the deposited amount to her Savings Bank Account, through RTGS to the 1st respondent/claimant within one week thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
The Motor Accident Claims Tribunal,
IInd Additional Subordinate Court,
Salem.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 14384

+1cc to Mr.T.M.Karthikeyan, Advocate, S.R.No. 13555

C.M.A.No.618 of 2014
and

M.P.No.1 of 2014

RSV(CO)
GN(23/04/2021)