IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2468 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
United India Insurance Company Limited,
No.123-A, No.2 Road,
Mayiladuthurai - 609 001.
Policy No.091701/31/12/01/00006484 ...Appellant/2nd Respondent

Vs.

1.Minor. Rilwana Nazeerin
(Represented by her Natural Guardian
and next friend / Mother, Sayira Banu)
..1st Respondent/Claimant

2.V.Elangovan ...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 15.07.2014 made in M.C.O.P.No.295 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

For Appellant : Mr.S.Arun Kumar
For RR 1 & 2 : No appearance

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 15.07.2014 made in M.C.O.P.No.295 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

2.The appellant is the 2nd respondent in M.C.O.P.No.295 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur. The mother of the minor 1st respondent filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her daughter in the accident that took place on 02.09.2012.

3.According to mother of the minor 1st respondent, on 02.09.2012 her daughter was travelling along with some others in a van bearing Registration No.TN 58 F 1549 belonging to 2nd respondent and insured with appellant on the Sirkali – Mayiladuthurai road towards Thaikkal. At about 11.30 A.M., while the van was proceeding near Vaitheeswaran Kovil, the driver of the van drove the same in a rash, negligent manner at hectic, uncontrollable speed without watching the oncoming bus, suddenly dashed against the Neem Tree on the western side of the road and caused the accident. In the accident, her daughter sustained injuries on head, both legs, diffused swelling over the distal, middle forearm, both bone fracture in left hand and multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to Government Hospital, Sirkali, where first aid treatment was given and thereafter she was shifted to Rajah Muthiah Hospital, Chidambaram, where she has taken treatment as inpatient from 02.09.2012 to 10.09.2012. Therefore, the mother of the 1st respondent filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her daughter against the 2nd respondent and appellant, being the owner and insurer of the van respectively.

4.The 2nd respondent - owner of the van remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the Mother of the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent's Mother. According to appellant, at the time of accident, the 2nd respondent's van was not having valid Fitness Certificate and Permit. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, injuries, period of treatment taken and medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the Mother of the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent's Mother examined herself as P.W.3, claimants in M.C.O.P.Nos.276 & 277 of 2013 examined themselves as P.W.1 and P.W.2 respectively and Dr.Sivaprasath was examined as P.W.4 and 10 documents were marked as Exs.P1 to P10. The appellant examined one Harikrishna as R.W.1 and marked two documents as Exs.R1 & R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to 2nd respondent and directed the appellant-Insurance Company to deposit a sum of Rs.4,20,000/- as compensation to the 1st respondent.

8.Challenging the liability fixed on them as well as the quantum of compensation awarded by the Tribunal in the award dated 15.07.2014 made in M.C.O.P.No.295 of 2013, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal having come to the conclusion that the 2nd respondent has committed breach of policy conditions, erroneously directed the appellant to pay the compensation. The Tribunal having relied on Ex.R2/Motor Vehicle Inspector's Report, ought to have held that appellant is not liable to pay compensation. The Tribunal ought to have directed the 2nd respondent to pay the compensation based on the judgments reported in 2004 (1) TNMAC 75, 2010 ACJ 1726 & 2012 (1) TNMAC 226. The Tribunal erroneously awarded excessive sum of Rs.4,20,000/- as compensation to the 1st respondent for the simple injuries sustained by her. In any event, the quantum of compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Though notice has been served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

12.From the materials available on record, it is seen that the Mother of the 1st respondent filed claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her daughter in the accident that took place on 02.09.2012. The Tribunal considering the pleadings, oral and documentary evidence, held that accident has occurred only due to rash and negligent driving by the driver of the van belonging to 2nd respondent and directed the appellant to pay the compensation. It is the case of the appellant that 2nd respondent's van did not have fitness certificate and permit at the time of accident and hence, they are not liable to pay the compensation to the 1st respondent. To prove the said contention, the appellant examined one Harikrishna as R.W.1 and filed Ex.R1/copy of Insurance Policy and Ex.R2/Motor Vehicle Inspector's Report. The Tribunal considering the evidence of R.W.1 and Exs.R1 & R2, held that offending vehicle did not have permit and fitness certificate at the time of accident. Having held so, relying on the judgment in C.M.A.(MD).No.137 of 2006 & C.M.A.No.2868 of 2006, (National Insurance Company Limited Vs. Veerammal and 7 others), the Tribunal held that appellant as insurer of the van belonging to 2nd respondent is liable to pay the compensation on behalf of the 2nd respondent.

13.It is the contention of the learned counsel appearing for the appellant that when offending vehicle did not have permit and fitness certificate, Insurance Company is not liable to pay the compensation. The said contention is not acceptable in view of the judgment of the Hon'ble Apex Court reported in 2018 ACJ 1768, [Amrit Paul Singh and others Vs. Tata AIG General Insurance Company Limited and others] and judgment of the High Court of Kerala reported in 2019 (1) TNMAC 206 (LB) (Ker.), [Pareed Pillai Vs. Oriental Insurance Company Limited], wherein it has been held that when the offending vehicle did not possess fitness certificate, Insurance Company is liable to pay the compensation awarded at the first instance and recover the same from the owner of the vehicle. Applying the said ratio, the award of the Tribunal is modified directing the appellant-Insurance Company to pay the compensation at the first instance and recover the same from the 2nd respondent-owner of the van.

14.As far as quantum of compensation is concerned, the 1st respondent is a minor girl aged 11 years at the time of accident and suffered 32% disability. To prove the same, she examined P.W.4/Doctor and filed Exs.P9/disability certificate and P10/X-Ray. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 338(SC), [Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited & another], granted a sum of Rs.4,00,000/- for 32% disability. The Tribunal granted further sum of Rs.20,000/- towards attendant charges. The compensation awarded by the Tribunal is not excessive warranting interference by this Court.

15.For the above reason, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.4,20,000/- 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 award amount along with interest and costs, less the amount if any already deposited, 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.295 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur, at the first instance and recover the same from the 2nd respondent. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor 1st respondent attains majority. On such deposit made by the Tribunal, the Mother of the minor appellant viz., Sayira Banu is permitted to withdraw the accrued interest once in three months for the welfare of the minor 1st respondent, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

krk
To
1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

+1 CC to Mr.S.Arun Kumar, Advocate s 69483.

C.M.A.No.2468 of 2015

VBM(CO)
SP(14/02/2022)