



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1311 of 2018
and C.M.P.No.10515 of 2018

United India Insurance Co.Ltd.,
No.5, Gomathypuram, New 1st Street,
Balaji Complex,
Sankarankovil.

... Appellant/2nd Respondent

Versus

1.Minor Roja ...1st Respondent/Petitioner
(R1-minor represented by her father Murugan)
2.M.Iyyadurai ...2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2016 made in M.C.O.P.No.3035 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri.

For Appellant : Mr.C.Paranthaman

For R1 : Mr.P.Paramasiva Doss

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award dated 28.11.2016 made in M.C.O.P.No.3035 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P.No.3035 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.06.2012.



3. According to 1st respondent, on 14.06.2012 at about 16.30 hours, after attending school and while returning home by walking near Eachampallam Oodai Palam on Sompatti to Pudhupatti Road. At that time, the motorcycle bearing Registration No. TN-76-X0579 came in a rash and negligent manner, without blowing horn, dashed on the 1st respondent and caused the accident. Due to the said impact, the 1st respondent fell down and sustained multiple grievous injuries all over her body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her against the appellant/Insurance Company.

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

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to the 1st respondent since she walked without observing of the movement of the vehicle and the alleged accident is also denied by the 2nd respondent. The first respondent has to prove the age, income, nature of injuries, medical expenses incurred due to the injuries sustained in the accident by producing documentary evidence. In any event, the total amount claimed as compensation is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the minor claimant P.W.1 to P.W.4 were examined and 15 documents were marked as Exs.P1 to P15. The appellant/Insurance Company, did not let in any oral or documentary evidence before the Tribunal.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.7,63,200/- as compensation to the 1st respondent.

8. Against the said award dated 28.11.2016 made in M.C.O.P.No.3035 of 2013, the appellant-Insurance Company has come out with the present appeal.

9. Questioning the award passed by the Tribunal, the learned counsel for the appellant/Insurance Company would contend that the Tribunal has granted excessive compensation under the head of permanent disability and also erroneously fixed the notional



income of the injured who is a minor girl aged about 9 years. He pointed out that the Tribunal has erroneously fixed the disability at 30% and also wrongly adopted multiplier method for the purpose of determining the compensation. He also pointed out that in the absence of any loss of earning power in respect of the injured claimant, the Tribunal has wrongly adopted the multiplier method. Therefore, the learned counsel for the appellant would contend that the quantum of compensation awarded by the Tribunal at Rs.7,63,200/- is very excessive and the same is liable to be reduced.

10.The learned counsel for the 1st respondent/claimant would submit that the Tribunal has rightly awarded the compensation having considered both oral and documentary evidence available on record and also taking note of the injuries sustained by the injured claimant and hence, the same does not call for any interference by this Court.

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

12. On perusal of the entire award, this Court finds that the injured claimant has deposed as P.W.1 that due to the injuries sustained in the accident, she was unable to continue her studies and she suffered loss of perspective earning power as well. P.W.2/the Medical Officer who examined the injured has assessed the injured/claimant orthopedic and hearing disability as 45% and 50% respectively. P.W.3/Medical Officer who examined the injured/claimant also assessed the disability at 45% since she sustained head injury in the accident and there was fracture of temporal right bone, fissure right the mastoid bone and SDH hemorrhage. It is pertinent to note that though P.Ws. 2 and 3 have assessed the disability between 45% and 50%, the Tribunal has reduced it at 30% and by following the principles laid down by the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and taking note of the age of the injured minor, has adopted multiplier of 15 and further relying upon the decision of this Court reported in Tamizhmeena Vs. Tamil Nadu State Transport Corporation Ltd., (2016 ACJ 1855), the Tribunal has fixed the notional income at Rs.8,000/- as against Rs.12,000/- claimed on behalf of the injured/claimant and as such the Tribunal has rightly awarded the compensation at Rs.6,48,000/- towards loss of earning power. In fact, during the examination of P.W.1 injured/claimant, the Tribunal has observed that the minor injured felt very difficult in hearing questions



put to her and answering them. Therefore, this Court does not find any infirmity in fixing the quantum of compensation by the Tribunal towards loss of hearing by adopting multiplier method while fixing the notional income at Rs.8,000/-. This Court also does not find any infirmity in respect of the compensation awarded under the other heads. However, while awarding just and reasonable award, the Tribunal has directed the appellant to pay the award amount with interest at 9% per annum, which this Court is inclined to reduce the same at 7.5% per annum. Except modification in respect of the interest aspect, the compensation awarded by the Tribunal is hereby confirmed.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.7,63,200/- awarded by the Tribunal as compensation to the minor/1st respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest at 7.5% p.a. 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.3035 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri. On such deposit, the respective award amount of the minor is directed to be deposited in any one of the Nationalized Banks, till the minor claimant attains majority. The father of the minor claimant is permitted to withdraw the accrued interest once in every three months, for the welfare of the minor claimant, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gbi
To

The Special Sub-Judge,
Motor Accidents Claims Tribunal, Krishnagiri.

+1cc to M/s.C.Paranthaman, Advocate Sr.59261
+1cc to Mr.N.Desinghu, Advocate Sr.59091

C.M.A.No.1311 of 2018

rsi[co]
srg 19/01/2022