



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.1305 of 2010

and

M.P. (MD) No.1 of 2010

The New India Assurance Company Ltd.,
No.34, Alagarkovil Road
Tallakulam, Madurai-625 001

... Appellant/2nd Respondent

-vs-

1.Kalaiarasi ...1st Respondent/Petitioner
[R1 declared as major vide Judgment dated 19.02.2021]

2. Sedapatti Agro Engineer Co-operative
Service Centre Limited
Saptoor Post
Peraiyur Taluk, Madurai District. ..2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 22.03.2010 in M.C.O.P.No.616 of 2006, on the file of the Motor Accident Claims Tribunal / I Additional Sub Court, Madurai.

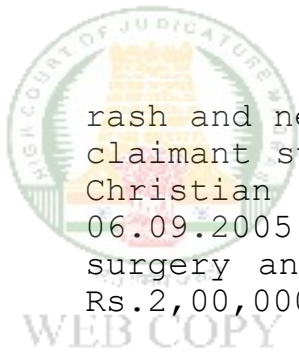
For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.K.Balasundaram for R1
No appearance for R2

J U D G M E N T

This civil miscellaneous appeal has been preferred by the Insurance Company challenging the Award, dated 22.03.2010, passed in M.C.O.P.No.616 of 2006, by the Motor Accident Claims Tribunal / I Additional Sub Court, Madurai.

2. This is a case of injury. The claimant was a minor aged about 12 years and she sustained injuries in the accident took place on 15.08.2005. The claimant would state that she was proceeding in a bicycle in Madurai Town on the left side of the road and when she was nearing Somu Travels Office, a Tractor bearing registration No.TN58 C3931 belonging to the second respondent - Society came in a



rash and negligent manner and hit against her. In the accident, the claimant sustained injuries and fractures. So, she was admitted in Christian Mission Hospital, Madurai, where she took treatment till 06.09.2005. During treatment period, the claimant underwent a surgery and a steel plate was fixed. She claimed compensation of Rs.2,00,000/-, but the Tribunal awarded Rs.92,959/- as compensation.

3. The contention of the appellant - Insurance Company before the Tribunal was that the driver of the offending vehicle did not have valid driving licence and the claim was excessive.

4. In order to prove the negligence, the claimant examined herself as P.W.1 and she produced Ex.P1 - First Information Report to show that a criminal case was registered against the driver of the offending vehicle. Ex.P4 shows that final report was filed against the driver of the offending vehicle and he was convicted by the Criminal Court and the Judgment copy was marked as Ex.P5. The Tribunal, on the basis of the evidence referred above, came to the conclusion that the accident occurred due to the negligence of the driver of the offending vehicle / Tractor.

5. The appellant - Insurance Company examined three witnesses to show that the driver of the offending vehicle did not have valid driving licence. A perusal of the Judgment of the Tribunal shows that the appellant - Insurance Company did not issue notice to the insured seeking particulars of the driving licence of the driver. The driver of the offending vehicle was also not examined before the Tribunal. It is true that R.W.2, who was working as Junior Assistant in the second respondent - Society, deposed that he did not know about the driving licence particulars of the offending vehicle's driver. Since the appellant - Insurance Company has not discharged its liability to prove that the vehicle was driven by a person, who did not have valid driving licence, the Tribunal has rightly fixed the liability to pay the compensation on the appellant - Insurance Company. I find no valid ground to interfere with the findings of the Tribunal.

6. The claim petition is of the year 2006 and at that relevant point of time, the first respondent - claimant was a minor and by now, she should have become major. So, the claimant is declared as major and the Tribunal is hereby directed to disburse her award amount.

7. In the light of the above facts, I do not find any merit in this civil miscellaneous appeal and the same is therefore dismissed. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of



this Judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The I Additional Sub Judge,
Motor Accident Claims Tribunal,
Madurai.
- 2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.BAALASUNDHARAM, Advocate (SR-6329[F] dated 19/02/2021)
+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-6334[F] dated 19/02/2021)

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VB (25.03.2021) 3P 6C