



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.624 of 2011

Minor Akalya .. Appellant/Petitioner
Rep. through her father and next
guardian Kathiresan

vs.

1.Mohamed Asithullah
2.National Insurance Co., Ltd.,
through its Divisional Manager,
No.37-C, S.N.High Road,
Tirunelveli-11. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.291 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Tirunelveli, dated 19.07.2010.

For Appellant : Mr.T.Selvakumaran
For R1 : Mr.M.Saravanakumar
For R2 : Mr.N.Murugesan

J U D G M E N T

This appeal is directed against the award of the Motor Accident Claims Tribunal (Principal Sub Court), Tirunelveli passed in M.C.O.P.No.291 of 2008, dated 19.07.2010, wherein, the Tribunal has awarded a sum of Rs.25,000/- under no fault liability against the claim of Rs.3,00,000/-. Being dissatisfied with the amount, the claimant has come up with this appeal to enhance the compensation.

2. The appellant herein was a minor aged about 15 years on the date of accident that had taken place on 30.05.2008. According to the claimant, she was riding a TVS-Champ bearing registration No.TN-69-W-1280 from Parani Nagar Branch Road of Tirunelveli-Tiruchendur main road. She rode the vehicle from South to North direction and reached the main road at that time another two-wheeler bearing registration No.TN-72-F-2747, which was driven in a rash and negligent manner, hit against the TVS Champ. In the



accident, she sustained multiple fracture and injuries all over the body, hence, she was admitted in a private hospital and took treatment as inpatient from 30.05.2008 to 09.06.2008. During that period, surgery was conducted and steel plates were implanted. Hence, she is entitled for compensation of Rs.3,00,000/-.

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3. The claim petition was resisted by the respondent/Insurance Company contending that the claimant, who was coming from a branch road, suddenly entered into main road without observing the traffic rules and hence, she alone was responsible for the accident and therefore, no liability can be fastened on the insurance company.

4. Before the Tribunal, the parties have let in oral and documentary evidence. Upon considering the evidence of the parties, the Tribunal held that the claimant herself was responsible for the accident and awarded a sum of Rs.25,000/- under no fault liability. Challenging the same, this civil miscellaneous appeal has been filed.

5. Heard Mr.T.Selvakumaran, learned counsel appearing for the appellant, M.Saravanakumar, learned counsel appearing for the first respondent and Mr.V.Murugesan, learned counsel appearing for the second respondent and perused the materials available on record.

6. It is an admitted fact that the claimant was a minor and she was 15 years old on the date of accident. The First Information Report was registered only on the basis of the complaint given by the claimant, in which, she has stated that when she was proceeding from South to North from Parani Nagar, she was about to cross Tirunelveli-Tiruchendur road, at that time the offending vehicle came from East to West direction hit against her vehicle, but in the claim petition she has stated that there was no fuel in the vehicle, while she was pulling the vehicle to the petrol bunk, the accident had taken place.

7. The Tribunal found that the complaint was lodged with a delay of three days, without any explanation for the belated complaint. It was also found that she did not give evidence before the criminal court and the accused was acquitted in the criminal case. The claimant has also failed to produce the sketch to establish the negligence on the part of the driver of the offending vehicle. On the other hand, the rider of the two-wheeler has categorically stated in his evidence that only due to the negligence of the claimant, the accident occurred. In my considered view that on proper appreciation of evidence the Tribunal has rightly come to the conclusion that the claimant was responsible for the accident. I find no reason to interfere with



the findings of the Tribunal.

8. In that view, the Civil Miscellaneous Appeal is dismissed as devoid of merits. The respondents 1 & 2 are directed to deposit the entire award amount jointly and severally 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 order. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(T & P)

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Sub Assistant Registrar(CS)

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Note :

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

To

1.The Motor Accident Claims Tribunal,
(Principal Sub Judge), Tirunelveli,

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-9859[F] dated 10/03/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-10235[F] dated 11/03/2021)

+1 CC to M/s.N.MURUGESAN, Advocate SR-10438[F] dated 11/03/2021

JUDGMENT MADE IN

C.M.A(MD) No.624 of 2011

09.03.2021

KG(CO)

TR(18.05.2021) 3P 7C