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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No.2295 of 2011

D.Gayathri (Minor)
Rep by her mother and
next friend D.Latha

... Appellant

-VS-

1.D.S.Suganya
(R1 was set exparte in the trial court)

2.United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai, Chennai – 2.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed Under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 15.11.2010 made in MACTOP.No.3349 of 2006 on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court) Chennai.

For Appellant : Mr.C.Munusamy

for Ms.V.Suguna

For Respondents : R1 was set exparte before the trial court

Mr.S.Arun Kumar for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant to set aside the Judgment and Decree dated 15.11.2010 made in MACTOP.No.3349 of 2006 on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court) Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the Petitioner is that on 03.08.2006 while the petitioner was proceeding in the carrier of the bicycle along the Tharamani road from North to South direction, the 1st respondent motor cycle bearing Reg. No.TN-01-X-8311 came at a high speed from behind in a rash and negligent manner and hit the bicycle in which the petitioner was travelling due to which the petitioner sustained injuries fracture of right foot right leg fingers, right leg below knee and injuries all over the body. The accident occurred due to the rash and negligent driving of the rider of the first respondent vehicle. The respondents 1 and 2, being the



owner and insurer of the vehicle respectively, are liable to compensate

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petitioner. The Petitioner was aged 10 years at the time of accident and she took treatment as out-patient. Hence, she seeks a sum of Rs.1,50,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the Petitioner, by filing counter, the second respondent would contend that the accident does not occur in the manner alleged by the Petitioner. The accident occurred only due to negligent driving of the bicycle by its rider in which the petitioner travelled as a pillion rider. The compensation claimed by the Petitioner is highly excessive. Thus, the second respondent seeks dismissal of the Petition.

5. Before the Tribunal, the mother of the Petitioner namely D.Latha examined herself as P.W.1 and the Doctor as P.W.2 and produced documents Ex.P.1 to Ex.P.4 to prove her claim. On the side of the respondents, neither witness was examined nor document was produced. On the basis of available evidence on record, the Tribunal



found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.28,500/- payable by the insurer of the vehicle/2nd respondent. Aggrieved over the quantum of the

Tribunal, the appellant/petitioner has come forward with the present appeal.

6. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent. The first respondent was set *exparte* before the Tribunal.

7. The learned counsel for the appellant has stated that the petitioner suffered fracture over right foot, crush injury over right little toe and dislocation over right knee besides other severe injuries. He further averred that the trial court has not award any sum towards loss of income to the family members in attending to the petitioner and mental agony. It has not considered the gravity of injuries, impact and consequences of the injuries. Even after prolonged treatment, the appellant/petitioner is not in a position to do her normal day-to-day



affairs. He further contended that the quantum of the award passed by the Tribunal is very low. The Tribunal ought to have enhance the award by setting aside the award passed by the Tribunal.

8. In the case on hand, before the Tribunal, the mother of the Petitioner examined herself as P.W.1 and clearly stated about the manner in which the accident occurred. On the side of the petitioner, Ex.P.1- Accident Register copy; Ex.P2- O.P. Chit; Ex.P3- First Information Report and Ex.P4-Disability Certificate were produced.

9. On the other hand, the respondents have not examined any person before the Tribunal to counter the claim of P.W.1 about the manner in which the accident occurred. In such circumstances, the Tribunal has correctly fixed negligence on the 1st respondent - driver of the motor cycle. No ground is made out to interfere with the conclusion of the Tribunal on the issue of negligence and liability aspect.

10. The mother of the Petitioner has clearly stated about the injuries suffered by her. The injuries are corroborated by Ex.P.1-



Accident Register Copy. Further, she has taken treatment as out-patient at Government Royappetah Hospital as pleaded in the petition and the same is corroborated by Ex.P.2, copy of the O.P. Chit issued by the said hospital. The mother of the Petitioner also examined P.W.2/Doctor to prove that the petitioner suffered grievous injuries. The disability

certificate issued by him is marked as Ex.P.4. It is apparent that the Petitioner suffered functional disability. P.W.2/doctor has assessed the disability at 20%. Having found that the petitioner suffers disability at 20%, the Tribunal has awarded amounts under different heads as follows:-

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1.	Pain and suffering	5,000/-
2.	Extra Nourishment	1,000/-
3.	Damages caused to clothes	500/-
4.	Medical expenses	1,000/-
5.	Transportation	1,000/-
6.	Disability at 20% at the rate of Rs.1000 per percentage	20,000/-
	Total	28,500/-



11. Considering the evidence available on record, the amount awarded under different heads as stated above is appropriate, just and reasonable and the same does not warrant any interference. Further, no ground is made out by the appellant to enhance the award passed by the Tribunal.

12. Accordingly, the appeal fails and the same is dismissed. The award dated 15.11.2010 passed in MACTOP.No.3349 of 2006 by the III Judge, Motor Accidents Claims Tribunal (Small Causes Court) Chennai, is confirmed. No costs.

Index: Yes/No
Internet : Yes/No
gv

08.12.2022

To

1. The III Judge, Motor Accidents Claims Tribunal
(Small Causes Court) Chennai.



V.R.Section, High Court, Madras.

A.A.NAKKIRAN.,J

gv

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