



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

CMA.No.612 of 2017
and
CMP.No.4454 of 2017

The Branch Office,
The National Insurance Company Limited.,
1st Floor, Sharadamma Building,
Bye pass Road, Hosur.

... Appellant / 2nd Respondent

Vs.

1. Minor.V.Ambaji,
represented by his Next Friend
and Father C.Venugopal.

2. K.Govindarajan

... Respondents / Petitioner / 1st Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.09.2006 made in MCOP.No.1847 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For 1st Respondent : Mr.M.Sivakumar (Amicus Curiae)

For 2nd respondent : No appearance

JUDGMENT

The second respondent/National Insurance Company in M.C.O.P.No.1847 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri/learned District Judge at Dharmapuri, Krishnagiri, is the appellant herein.

2.They are aggrieved by the quantum of compensation granted as claimed by the claimant therein, who was a minor aged 12 years at the time of said accident.



3.It had been stated that the claimant viz., V.Ambaji, was studying in fifth standard at Don Bosco Matriculation School at Hosur. On 15.04.2002 at around 8.15 a.m., he was standing on the left side of the road near Mookandapalli Bus Stop to go to School. At that time a Yamaha Motor Bike bearing Registration No.TN 29 Q 9067, belonging to the first respondent, which was insured with the second respondent, said to have been driven in a rash and negligent manner, dashed against the claimant and caused the accident. The injuries suffered by the claimant were as follows:

- 1.Fracture of both bone right leg
- 2.Swelling deformity, tenderness and abnormal mobility by present
- 3.Contusion of 5" x 5" front of right leg
- 4.Contusion of 5" x 5" in the front of the left leg.
- 5.Lacerated wound of 1" x 1/2" in the right cheek.
- 6.Contusion of 3" x 3" in the wound around.

Claiming compensation for the aforementioned injuries, the claim petition was filed before the Tribunal.

4.The claim petition was taken up for consideration by the learned Sub Judge, Krishnagiri and the Judgment was delivered on 15.09.2006. During trial, the father of the minor claimant was examined as P.W.1. Exs.P1 to P6 were marked. Ex.P1 was the First Information Report. Ex.P2 was the certificate being related to the injuries suffered. Ex.P3 was the Discharge Summary from Vijay Nursing Home, Hosur. Ex.P4 was the medical bills. Ex.P5 was a letter from Nallampatty Hospital. Ex.P6 was the bills relating to the transport expenses.

5.It had been pointed out by Mr.S.Arun Kumar, learned counsel appearing for the appellant that there is no assessment of disability sustained by the claimant and there is no disability certificate with respect to the injuries suffered and the functional ability of the claimant post injuries. In the absence of such a certificate, it is contended by the learned counsel for the appellant that it is highly unreasonable, and unlawful on the part of the Tribunal to have granted the compensation at an exorbitant amount determining a sum of Rs.60,000/- towards the injuries suffered and also granting compensation under various other heads. It is therefore, urged by the learned counsel for the appellant that the Judgment should be interfered with.

6.Notice had been directed to the respondent. Though notice had been served and names and addresses have been printed in the cause list, there has been no appearance on behalf of the respondent.



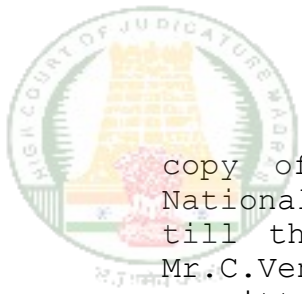
7.It had been noted that Mr.M.Sivakumar, learned counsel had been appointed as Amicus Curiae by my predecessor. The learned counsel for the appellant was also served with the relevant records and the learned counsel during the course of his arguments justified the award granted. But, also stated that the disability certificate had not been produced for the actual injuries/assessment of the injuries suffered by the claimant.

8.In view of these particular facts while analyzing the judgment, the first point to be examined is as to whether, the accident occurred due to the rash and negligent driving of the Yamaha Motor Bike bearing Registration No.TN 29 Q 9067. This fact has been established and the copy of the FIR had also been produced. It is seen that the claimant was standing on the road for going to school in the bus stop. At that time a motor-cycle had dashed against them. The negligence was fixed by the Tribunal on the driver of the motor cycle. I would also confirm that particular fact.

9.The next aspect to be examined is the compensation granted by the Tribunal. The accident had occurred in the year 2002. The assessment of disability was in the year 2011. The injured was a minor. At that particular age, there is every possibility of fractures healing quickly and such being the case, full functional ability would have been attained over a period of time. Among the injuries suffered due to the accident, only one injury is fracture and others are contusion injuries and one lacerated injury, which would have affected the injured for some time to some extent. These are all injuries that can be very well get cured as the injured is a boy of young age. Therefore, the possibility of disability apparent when viewed is quite remote.

10.In view of that particular fact, let me interfere with the compensation granted by the Tribunal. Let me grant compensation of Rs.45,000/- towards injuries suffered and also grant an additional amount of Rs.5,000/- towards damages to clothes and grant a sum of Rs.9858/- towards transport expenses and grant a sum of Rs.3,000/- towards nutrition. This would indicate a total compensation payable would be Rs.62,858/-.

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,78,058/- is hereby reduced to Rs.62,858/- [Rupees Sixty Two Thousand Eight Hundred and Fifty Eight only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a



copy of this judgment, to be deposited in any one of the Nationalized Banks, in any interest bearing Fixed Deposit Scheme till the minor 1st respondent attains major. On such deposit, Mr.C.Venugopal, who is the father of the minor 1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 1st respondent. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.1847 of 2003, if the entire award amount has already been deposited by them. There shall be no order as to costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dua/ssi

To:

The Sub Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.16625
+1cc to Mr.M.Sivakumar, Advocate, S.R.No.16386

C.M.A.No.612 of 2017

AK[co]
NSK 21/04/2022