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C.M.A. No.2930 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2930 of 2018

and

C.M.P. No.22188 of 2018

The Manager
United India Insurance Co. Ltd.
Micro Office, Sankari Post
Salem - District

... Appellant

Vs.

1. Minor. Prakash S/o.Ganesan
Minor is rep. by his NF/Mother Madhu
Indur Agraharam, Nathahalli Post
Dharmapuri District

2. Senthilkumar

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the Judgment and decree dated 16.02.2018 made in MCOP No.255 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Dharmapuri.

For Appellant : M/s.I.Malar

For Respondents : Mr.M.ERajasimhan for
Mr.S.Sathiaseelan for R1



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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and decree dated 16.02.2018 made in MCOP No.255 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Dharmapuri.

2. The 1st respondent is a minor claimant. The 2nd respondent is the owner and the appellant is the insurer of the offending vehicle namely Tata ACE.

3. The case of the minor claimant is that on 31.12.2015, he was riding a Bajaj Discover two wheeler bearing Regn. No. TN-43-D-4285 from B.S. Agraharam to Anumanthapuram. His mother namely Madhu had seated on the on pillion. At about 6.10 p.m., near Sompatti bus stop on the Dharmapuri to Pennagaram High Ways, when he was riding the two wheeler keeping to the extreme left side of the road from east to west, a Tata ACE vehicle bearing Regn. No.TN-30-R-3034, which came from the opposite side in a rash and negligent manner at high speed, dashed against the two wheeler due to which, the minor claimant sustained injuries and was admitted in the



Dharmapuri Government Medical College Hospital. On the next day, he was treated by Dr.Krishnakumar, Ortho, and a surgery was done with plate and screws for fracture of both bones right hand.

4. The minor claimant, represented by his next friend/mother Madhu, filed a claim petition in MCOP No.255 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Dharmapuri, claiming compensation of Rs.10,00,000/- from the owner and insurer of the offending vehicle stating that at the time of accident, he was aged about 18 years and was earning Rs.15,000/- per month by working as a two wheeler mechanic and due to the disability suffering by him due to the accident, he was unable to do the mechanic work.

5. In order to substantiate the claim, on the side of the claimant, one witness was examined as P.W.1 and 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, no oral or documentary evidence was let in.



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6. Before the Tribunal, the 1st respondent therein/owner of the offending vehicle, remained ex-parte.

7. The Tribunal, after hearing the arguments of both sides and considering the materials, awarded compensation of Rs.4,22,500/- and directed the 2nd respondent therein/Insurance Company to deposit the Award amount with cost and interest at 7.5% per annum from the date of petition to till the date of deposit (excluding the period of dismissal for default if any).

8. The Insurance Company has filed the present appeal challenging the liability as well as the quantum fixed by the Tribunal.

9. The learned counsel for the appellant/Insurance Company would submit that the injured was a minor and as per the Aadhar Card of the claimant, he was aged 17 years at the time of accident. No minor is allowed to ride any motor vehicle in the public place whereas, in this case, the minor claimant was allowed to ride the motor cycle that too in the National Highways along with a pillion rider who is his mother. Further, at that time of accident, the minor claimant did not possess valid licence due to which, the



accident had taken place. The appellant/Insurance Company is the insurer of the opposite vehicle namely Tata Ace. The Tribunal failed to consider the same and fastened the entire liability against the opposite vehicle i.e. Tata Ace, which is insured with the appellant/Insurance Company which is erroneous. The learned counsel further submitted that the disability suffered by the minor claimant is only a partial disability and not total permanent disability, whereas, the Tribunal, instead of adopting percentage method, has awarded a sum of Rs.3,00,000/- in lump sum towards disability which is also erroneous. Therefore, the award passed by the tribunal is liable to be set aside.

10. The learned counsel for the respondent/minor claimant submitted that the pillion rider of the motor cycle/mother of the minor claimant was examined as P.W.1 and she has narrated the manner of accident stating that the minor claimant was riding the two wheeler on the Dharmapuri-Pennagaram road by keeping her on the pillion and near Sompatty bus stop, a Tata ACE vehicle which came from the opposite direction being driven in a rash and negligent manner, dashed against the two wheeler and she has also stated that the minor claimant was riding the two wheeler slowly on the left side of the road. Even though the FIR was registered only against the driver



of the Tata Ace vehicle, the driver of the TATA Ace, did not come to the witness box to disprove his negligence. Even the appellant/Insurance Company has not examined any eyewitnesses or common witness and proved contra to the evidence given by P.W.1/pillion rider of the appellant. Though the learned counsel for the appellant/Insurance Company submitted that P.W.1 is an interested witness, naturally, the eyewitness would be either injured or pillion rider. In case, if the injured or pillion rider is not able to come to the witness box, any other witness may be examined. Admittedly, in this case, P.W.1 is the pillion rider of the motor cycle which was ridden by the minor claimant and the minor claimant is none other than her son. Therefore, there is no reason to disbelieve the evidence of P.W.1.

11. It is settled proposition of law merely because the eyewitness is a relative, they cannot be thrown away without any valid reason. Admittedly, in this case, P.W.1 is the pillion rider and she has seen the accident and also sustained injuries in the accident and her presence in the accident place is not in dispute and the same is also not challenged by the appellant/Insurance Company and disproved the evidence of P.W.1.



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12. Further, the learned counsel for the appellant/Insurance Company vehemently contended that the rider of the motor cycle was a minor and he did not possess valid licence. Admittedly there is no dispute that at the time of accident, the rider of the motor cycle/claimant was a minor and he did not possess license. But the evidence does not show that the accident had occurred due to the rash and negligent riding of the minor claimant. The complaint has been given by P.W.1 who is the pillion rider of the motor cycle and contra to same, the driver of the Tata ACE, has not given any complaint or given any complaint against the minor claimant. Even the driver of the Tata ACE has not come to the witness box and subjected himself for cross examination. Therefore, the evidence of P.W.1 is unquestioned.

13. Therefore, this Court finds that unless there is any contra evidence or any specific materials to show that the because of the rash and negligent riding of the minor claimant only the accident had happened, liability cannot be fixed on the minor claimant merely because he is minor and rode the motor cycle without licence.



14. P.W.1 has clearly stated that the accident had happened due to the rash and negligent driving of the driver of the Tata ACE and the FIR has also been registered against him only. As stated earlier, the driver of the Tata Ace has not filed any complaint against the minor claimant or for not impleading him as a party to this case. Even though, the FIR was registered against him, he has not filed any counter before this Court or come to the witness box. Even the Insurance Company has not summoned him and proved contra to the evidence to P.W.1 regarding the manner of accident.

15. As a first appellate Court and final Court of fact finding, this Court can re-appreciate the entire evidence and give an independent finding. This Court, while re-appreciating the entire materials, finds that the accident had happened only due to the rash and negligent driving of the driver of the TATA Ace vehicle. The Tribunal rightly fixed the liability and there is no material to take contra to the findings of the Tribunal regarding liability. Therefore, the appellant/Insurance Company is liable to pay the compensation.



16. As far as quantum of compensation is concerned the learner counsel for appellant vehemently contended that the Medical Board has given the disability certificate assessing the disability at 20% which is only a partial permanent disability and it is not mentioned as total permanent disability, whereas the Tribunal instead of adopting percentage method, awarded compensation of Rs.3,00,000/- as lump sum towards disability, which is erroneous. Further, no doctor was examined to prove the percentage of disability. But in this case, the injured is a minor and the disability certificate has been issued by the Medical Board. There is no contra evidence to prove that the percentage of disability fixed by the Board would be otherwise if any doctor was examined or the Medical Board has fixed the disability without any materials.

17. The disability certificate issued by the Medical Board is a public document and until contrary is proved, it can be taken as genuine. If at all the appellant/Insurance Company felt it exorbitant, it should have summoned one of the members of the Board and should have established that the disability fixed by the Board is exorbitant and it does not reflect the actual disability. In the absence of the same, the disability fixed by the Board has to be taken into consideration.



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18. The Tribunal has rightly taken the disability at 20% partial permanent disability as issued by the Medical Board, and since the injured was a minor, by following the decisions of the Hon'ble Supreme Court in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited*** reported in ***2013 (2) TNMAC page 338***, awarded compensation of Rs.3,00,000/- towards disability.

19. This Court finds no perversity in the appreciation of evidence and the quantum of compensation awarded by the Tribunal. Therefore there is no merit in the appeal. The same is liable to be dismissed.

20. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1. The Motor Accident Claims Tribunal
(Special District Judge) at Dharmapuri.

2. The Section Officer,
VR Section, High Court, Madras.

C.M.A. No.2930 of 20





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P.VELMURUGAN, J

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