

(2012) 09 MAD CK 0192

Madras High Court

Case No: CMA. No. 184 of 2008

National Insurance Company
Limited

APPELLANT

Vs

Seetha and Another

RESPONDENT

Date of Decision: Sept. 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 337

Citation: (2013) 1 MLJ 778

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: S. Arunkumar, for the Appellant; V. Kumaravelan, for the Respondent

Final Decision: Allowed

Judgement

Aruna Jagadeesan, J.

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited against the Judgment and Decree dated 20.1.2007 made in MCOP. No. 115 of 2004 by the learned Additional Special Judge (MACT) Krishnagiri. The facts in a nutshell are that on 13.4.2003 at 2.00 p.m. when the minor claimant was standing on the left side of the road in Balaguri, Krishnagiri Taluk, the mini door van bearing Reg. No. TN-33-P-0733 owned by the 2nd Respondent and insured with the Appellant Insurance Company driven by its driver in a rash and negligent manner, dashed against the minor claimant, causing serious injuries to her.

2. The Tribunal by the impugned judgment and award found that the accident was caused by the rash and negligent driving of the driver of the offending van. The Tribunal also found that the minor claimant sustained 35 per cent permanent disability in the right thigh and consequently, the Tribunal granted a total compensation of Rs. 2,38,000/- with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization.

3. The Appellant Insurance Company has challenged the impugned award on the ground that the accident itself is doubtful, since the Police was not informed about the accident immediately after the accident and the First Information Report was lodged on 21.5.2003, which was about nearly 1 1/2 month after the accident.

4. On a perusal of the impugned award, it is found that the Tribunal, on consideration of the oral and documentary evidence, recorded a finding that on 13.4.2003, the accident was caused by the mini door van. The Appellant has not disputed the identity of the vehicle in causing the accident, but it disputed the accident itself.

5. On a perusal of the records, it is seen that the accident had occurred on 13.4.2003 at 2.00 p.m. and the minor claimant suffered injury on her right thigh and she was immediately taken to the Bone Setting Hospital, Nallampatti on the same day and she has been given native treatment for union of the fractured bones and she has been advised to come on 28.4.2003. Since the bones did not get united, she was taken to Nagari Puthur for treatment and despite treatment given in Nagari Puthur, the bones did not get united. Thereafter, she has gone to the Government Hospital, Krishnagiri on 20.5.2003. The mother of the minor claimant, who examined herself as P.W.1 has stated that since the driver of the mini door van and the owner assured that they would look after the medical expenses, she did not give any police complaint regarding the accident. Since they did not spend any amount for the medical expenses except paying a meagre amount, she had lodged the complaint, after informing her husband, who was working in the Army and after his arrival, she had given the complaint on 20.5.2003 before the Police Station at Krishnagiri Taluk.

6. In so far as the First Information Report Exhibit P-10 is concerned, though it was recorded nearly 37 days after the accident, but it contains the reasons for the delay in making the First Information Report as stated above. The circumstances which are mentioned in the First Information Report indicate that the accident cannot be doubted merely on the ground that there was delay in lodging the First Information Report. The records also indicate that on the basis of the First Information Report, a case has been registered against the driver of the mini door van in Cr. No. 333 of 2003 under Sections 279 and 337 of IPC. A perusal of the cross-examination of P.W.1 indicates that no cross-examination was done by the Insurance Company on the aspect of the accident deposed by the witnesses of the claimant. Thus, I do not find any error in the finding recorded by the Tribunal that the accident was caused by the driver of the offending vehicle in which the claimant had received, injuries.

7. It is also worth to note that the Division Bench of the Madhya Pradesh High Court in the case of Daulatram v. Akhlesh Kumar. 2006 3 MPWN 117 has taken a view that if the accident is proved by eye; witness and police also registered a criminal case against the driver, then the application cannot be dismissed. The Honourable Supreme Court while considering the delay in lodging the First Information Report in the case of State of Punjab v. Ram Dev Singh 2003-2-JLJ-1 has taken a view that

the delay in lodging the First Information Report cannot be used as a ritualistic formula for doubting Prosecution case and the Court has to see the explanation for the delay. Since the claim cases are summary in nature, the standard of proof is different and if the accident is established on the preponderance of probabilities, it is sufficient to record a finding to that effect.

8. Mr. S. Arunkumar, the learned counsel for the Insurance Company has also challenged the impugned award with regard to the quantum on the ground that the compensation awarded by the Tribunal is on the higher side. On a perusal of the impugned award, it is found that the Tribunal has awarded Rs. 1,00,000/- for the disability suffered by the minor claimant, Rs. 10,000/- for future medical expenses, Rs. 20,000/- for medical expenses, Rs. 2,000/- for damages to clothing and Rs. 1,000/- for transportation and a sum of Rs. 1,05,000/- for the pain and suffering.

9. Admittedly, the injured minor claimant was 31/2 years old at the time of the accident. There is no dispute that she has suffered fracture on the left thigh. The Doctor has assessed her disability as 35 percent on the ground that there is mal-union of fractured bones and there is only a small shortening of leg to an extent of 3/4. He has stated that title injured would find it difficult in squatting and to attend the calls of nature. He has further stated that she will not be in a position to run and play as the other children could do. Looking into the injuries, I am of the view that Rs. 1,00,000/- granted for permanent disability and Rs. 1,05,000/- towards pain and suffering are on the higher side. Accordingly, it is reduced to Rs. 60,000/- towards permanent disability and Rs. 20,000/- towards pain and suffering. Further, a sum of Rs. 5,000/- for medical expenses, Rs. 2,500/- for transportation expenses, Rs. 2,500/- for extra nourishment and Rs. 20,000/- for the loss of amenities are awarded. In all, a sum of Rs. 1,10,000/- as total compensation with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization is awarded to the minor claimant. In the result, this Civil Miscellaneous Appeal is allowed. The impugned award is reduced from Rs. 2,38,000/- to Rs. 1,10,000/- as mentioned above. In all, the minor claimant is entitled to a total compensation of Rs. 1,10,000/- (Rupees one lakhs ten thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realization. The entire award amount of the minor claimant shall be invested in any one of the Nationalised Banks, till she attains majority and the natural guardian, mother of the minor claimant is entitled to withdraw the interest from the deposit of the award of the minor claimant once in three months. No costs. The Appellant Insurance Company is permitted to withdraw the balance award amount with proportionate interest, after satisfying the award. No costs.