IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2011

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THE HON'BLE MR.JUSTICE B.RAJENDRAN

C.M.A.Nos.2153 and 2154 of 2006
And
C.M.P.Nos.8927 and 8928 of 2006

The New India Assurance Co. Ltd.,
No.45, Moore Street,
Divisional Office,
Chennai-1. ... Appellant in both CMA's/2nd Respondent

vs.

1.Minor Saritha ...1st Respondent in CMA Nos.2153/06
Rep. by father Sundaram and 2154/06/Petitioner
2.R.Murugadoss ... 2nd Respondent in both CMA's/
II Respondent in both the CMA's
3.Minor Manimegalai
Rep. by father Balasundaram ...1st Respondent in CMA 2154 of 2006
/Petitioner

Common Prayer:

Appeals filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree passed in MCOP.No.48 and 49 of 2004 on 20.04.2005 on the file of the Learned Motor Accidents Claims Tribunal, Sub Court, Ponneri.

For appellant : Mr.J.Chandran

For respondents : No Appearance



COMMON JUDGMENT

Both the appeals have arisen out of the same accident. Common Judgment was passed against which the Insurance Company has come forward with these appeals as against the quantum of compensation awarded to the claimants. Accident is admitted, liability is admitted but only the quantum is questioned in both the appeals.

2.In so far as the first case, CMA No.2153 of 2006 is concerned, the injured is a minor girl aged about 9 years, student in a school.

She has suffered fracture of the right clavicle, head injury, concussion in the brain and the Doctor has certified 30% disability. The lower court has awarded a sum of Rs.64,500/- as against the claim of Rs.1,00,000/-. Aggrieved against the same, the appellant-Insurance Company has come forward with this appeal.

3.In so far as the second case, CMA No.2154 of 2006 is concerned, the injured is a minor girl aged about 10 years. She has suffered depression of the skull, fracture of the skull frontal bone and temporal region right and the Doctor has certified 35% disability and the lower court has awarded a sum of Rs.72,600/- as against claim of Rs.1,50,000/-. Aggrieved against the quantum, the appellant-Insurance Company has come forward with this appeal.

4.Though notice has been served to the respondents/claimants, none appeared. No-one has filed vakalat. Their names have been printed. Yet no-one has appeared. Hence the matter is taken up together and common judgment is passed in the appeals.

5.The only point for consideration in both the appeals are whether the amount of compensation awarded by the court below is fair, reasonable and correct.

6.The learned counsel for the appellant-Insurance Company fairly submitted that the accident is admitted, liability is also admitted. They are challenging only on the ground of quantum of compensation awarded.

7.In so far as the first case, CMA No.2153 of 2006 is concerned, the injured claimant is a minor girl aged about 9 years had sustained fracture of the right clavicle at the lateral end. As per the discharge summary issued by the Government Hospital, she was admitted in the hospital on 06.01.2003 and discharged on 11.01.2003. Though there was an injury on the head and X-ray was taken, there was no fracture in the skull. The lower court taking into consideration that there was a fracture at the right clavicle has awarded a sum of Rs.40,500/- for loss of income. The lower court has awarded a sum of Rs.10,000/- for pain and sufferings, Rs.10,000/- for extra-nourishment, Rs.3,000/- for transport charges Rs.3,000, for damage to articles and clothes Rs.1,000/- and hence, a sum of Rs.64,500/- was awarded as total compensation. From the records, it is also clear that P.W.4, Doctor has certified 30% disability. Due to the injury, the Doctor has given disability certificate which is marked as Ex.P.11. The discharge summary is marked as Ex.P.8.

8.The only ground of attack was that the lower court has adopted multiplier theory. Yes, it is correct that normally the multiplier theory should not be adopted in the case of injury, but if we take into consideration, the disability of 30% as assessed by the Doctor and also taking into consideration, there is a fracture of the

clavicle, as per the decision of this Hon'ble Court, Rs.2,000/- per percentage of disability could be granted and if Rs.2,000/- per percentage of disability is granted, for 30% disability, it works out to Rs.60,000/-. The lower court has already granted Rs.10,000/- for pain and suffering. When we add this, it comes to Rs.70,000/- and when we add the amounts granted in various other heads, it works out to even more amount. Whereas, even though a wrong method is utilised, the total award granted is only Rs.64,500/- and it is a very clear case from evidence the claimant was suffering from fracture and she was an in-patient for more than five days.

9.Therefore, I do not find any reason to interfere only in respect of the quantum of compensation when the quantum is only lesser, if we apply the correct theory. Though wrong theory is adopted less amount is granted. Hence, observing that the multiplier theory should not have been adopted, yet the amount is less than what it could have been awarded under the correct method, the appeal is dismissed and no interference is called for.

10.In so far as the second case, CMA No.2154 of 2006 is concerned, the injured claimant is again a minor girl aged about 10 years who had sustained multiple injuries. As per Ex.P.10, disability Certificate marked through the Doctor P.W.4, she has a depression in the skull with a fracture of the frontal bone and temporal region and as per the Discharge summary Ex.P3 marked through P.W.1, the patient was admitted in the hospital on 06.01.2003 and discharged on 10.01.2003 and observation in the discharge summary is right frontal haemographic contussion and right fracture at the temporal depression and suture was done in the temporal region. Therefore, the Doctor who has examined the patient has given permanent disability certificate upto 35%.

11.Here also the only grievance of the appellant-Insurance Corporation is the adoption of the multiplier theory method. The lower court has applied the multiplier method and awarded a sum of Rs.48,600/- for loss of income. The lower court has awarded a sum of Rs.10,000/- for pain and sufferings, Rs.10,000/- for extra-nourishment, Rs.3,000/- for transport charges, Rs.1000/- for damage to articles and clothes and hence, a sum of Rs.72,600/- was awarded as total compensation. If 35% disability is taken into consideration and discarding the multiplier method, if we apply even Rs.2,000/- per percentage, it would easily go to Rs.70,000/-. The lower court has already granted Rs.10,000/- for pain and suffering. When we add this, it comes to Rs.80,000/- and when we add the amounts granted in various other heads, it works out to even more amount. Whereas, even though a wrong method is utilised, the total award granted is only Rs.72,600/-.

12.Therefore, even though a wrong method is adopted since the award granted is less than what would have been granted by the court,

by adopting the correct method, this Court finds no reason to interfere with the order except to observe that the adoption of multiplier method should not have been done, this appeal is dismissed.

13.Accordingly, the appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

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Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal, Sub Court, Ponneri.

2 The Section Officer,V.R.Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate Sr.7196

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PA(CO)
rvr
10/05/2011