IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.659 of 2007
and
C.M.P.No.1 of 2007

National Insurance Company Ltd.,
Branch Office, P.B.No.23,
88 F, Bye pass Road, Dharmapuri. .. Appellant/Respondent II

Versus

1.Abilash Kumar (Minor) ..Respondent I/Petitioner
(Rep by Father & Friend Muthusami)

2.S.Krishnan .. Respondent 2/Respondent I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 06.04.2006 made in O.P.No.877 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondent 1 : Mr.P.Mani

J U D G M E N T

The civil miscellaneous appeal has been preferred against the award and decree passed in MCOP.No.877/2003 dated 06.04.2006, by the appellant herein, i.e., the National Insurance Company.

2.The brief facts leading to the claim application is that on 08.12.2002 at about 8.30 am when the petitioner and his mother were walking on the left side of the road in Kambainallur, at that time, a motor cycle belonged to the first respondent which was driven by him, came in the opposite direction in a rash and negligent manner and hit against the petitioner, as a result, the petitioner sustained severe injuries all over his body. The claim was made for a sum of Rs.3,00,000/- lakhs before the Tribunal.

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3.The respondent/appellant insurance company in the counter statement denied the accident itself on the basis that there is a discrepancy with regard to the fact of the accident mentioned in the wound certificate and the other aspects also.

4.The Tribunal, after analyzing the evidence and documents placed before it by the both parties, awarded a sum of Rs.2.80 lakhs, against the claim of Rs.3,00,000/- made by the claimant/respondents.

5. Aggrieved against the same, the insurance company has preferred this appeal.

6. The grounds raised by the Insurance Company in the appeal are that in Ex.P2 wound certificate, it has been stated that the injured had fallen from two wheeler and sustained injuries thereby the involvement of the first respondent vehicle is denied by the appellant. The other grounds raised by the appellant is that the continuous treatment of the claimant and the disability that has been exaggerated by P.W.2 and also the sum awarded under various heads regarding the disability, injury, pain and sufferings, hence the total sum awarded at Rs.2.80 lakhs is stated as excessive.

7.Heard both sides and perused the materials available on record.

8.On perusal of records, it is observed that though the appellant has raised number of grounds in the appeal, the specific ground raised by the appellant is only with regard to the quantum and therefore the sum awarded under various heads are stated as excessive. On perusal of records, it is observed that the injured person is a boy who was studying in 8th Std at the time of accident. It is clear from the evidence of claimant and the Doctor P.W.2 that the injured person had sustained injuries and particularly bone fracture on his right leg, which are very much substantiated by Ex.P2. The medical expenses incurred by the claimant also proved by Ex.P4. The Tribunal after analyzing the wound certificate and the disability certificate and bills related to medical expenses, has awarded compensation under various heads as follows:-

Heads	Amount Awarded by Tribunal (Rs)
Injury	40,000/-
Disability	1,00,000/-
Pain and Sufferings	40,000/-

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Heads	Amount Awarded by Tribunal (Rs)
Future loss of earning	40,000/-
Medical Expenses	40,000/-
Extra Nourishment	10,000/-
Conveyance Expenses	10,000/-
Total	2,80,000/-

9.On the side of appellant, it is vehemently argued that when the sum awarded by the Tribunal for disability at Rs.1,00,000/-, a further sum of Rs.40,000/- awarded under the head 'injury' is not proper. It is further argued that the sum awarded for pain and sufferings and future loss of earning are all on the higher side.

10.On hearing the arguments advanced by both side and also on perusal the documents relating to the nature of injury and disability as deposed by P.W.2, this Court inclined to modify the sum awarded by the Tribunal under various heads.

11.By considering the argument of the appellant that the Tribunal has awarded the sum both under the head "injury" and the "disability", this Court is of the view that by taking into consideration of the disability sustained by the claimant, it would not be proper to award the sum under the said two heads. Accordingly, this Court, set aside the award under the head "injury" and modifies the sum awarded under the head "disability" at Rs.60,000/- i.e., by taking the disability at 30% and fixing Rs.2,000/- per percentage. Similarly, the sum awarded under the other heads are also modified. For pain and sufferings Rs.30,000/-, Medical Expenses Rs.35,000/-, Extra Nourishment Rs.10,000/-, Conveyance Expenses Rs.10,000/-, Attended Charges Rs.10,000/-, and loss of Amenities Rs.20,000/-. Therefore, the sum awarded by the Tribunal is modified as Rs.1,75,000/- as below:-

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Heads	Amount Awarded by Tribunal (Rs.)	Amount Modified by this Court (Rs.)
Injury	40,000/-	
Disability	1,00,000/-	60,000/-

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Heads	Amount Awarded by Tribunal (Rs.)	Amount Modified by this Court (Rs.)
Pain and Sufferings	40,000/-	30,000/-
Future loss of earning	40,000/-	
Medical Expenses	40,000/-	35,000/-
Extra Nourishment	10,000/-	10,000/-
Conveyance Expenses	10,000/-	10,000/-
Attended Charges		10,000/-
Loss of Amenities		20,000/-
Total	2,80,000/-	1,75,000/-

12.In view of the above modification, the civil miscellaneous appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

13.Accordingly, the appellant/Insurance Company is directed to deposit the entire award amounts, in respect of above appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon. The modified amount shall carry to rate of interest of 9% per annum.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

AT

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To

1. The Sub-Court,
   Motor Accident Claims Tribunal,
   Krishnagiri.

Copy To :
The Section Officer,
   V.R. Section,
   High Court,
   Madras - 104.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.66532

+1cc to Mr.P.Mani, Advocate SR.No.67481

C.M.A. No.659 of 2007

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