



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2100 of 2011

National Insurance Co. Ltd.,  
Branch Manager  
Attur, Salem District.

..Appellant/2<sup>nd</sup> Respondent

Vs.

1.Minor - Lakshmanan  
S/o Palani,  
minor represented by the Next  
Friend and father Palani

... Petitioner

2. Saridha  
(R2-set expart in lower court)

..1<sup>st</sup> Respondent/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 to set aside the award made in M.C.O.P.No.1100 of 2008 dated 23.11.2010 on the file of the Motor Vehicles Accident Claims Tribunal(Chief Judicial Magistrate) at Dharmapuri.

For Appellant : Ms.M.B.Surekha  
For Respondent: Mr. P. Mani for R1  
R2 - Exparte

#### JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Judicial Magistrate at Dharmapuri in its award dated 23.11.2010 passed in MCOP.No.1100 of 2008.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The 1<sup>st</sup> respondent sustained injuries on 11.4.2008 as a result of an accident caused by a lorry bearing Registration No.TN-28-7317, owned by the 2<sup>nd</sup> respondent and insured with the appellant.



(ii) The 1<sup>st</sup> respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.1100 of 2008 seeking a compensation of Rs.7 lakhs for the injuries sustained by him.

(iii) The Motor Accident Claims Tribunal, by its award dated 23.11.2010 in MCOP.No.1100 of 2008, directed the appellant to pay the 1<sup>st</sup> respondent a sum of Rs.2,29,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iv) Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the insurance company.

3. Heard Ms.M.B.Surekha, learned counsel for the appellant and Mr.P. Mani, learned counsel for the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent has remained exparte both before the tribunal as well as this Court.

4. According to the learned counsel for the appellant, the compensation awarded by the tribunal under the impugned award is excessive. According to her, the tribunal ought not to have awarded compensation of Rs.20,000/- towards mental agony in addition to Rs.25,000/- towards pain and suffering. Further, she contends that the tribunal ought not to have awarded a sum of Rs.1 lakh as compensation to the 1<sup>st</sup> respondent towards loss of future earnings.

5. Per contra, learned counsel for the 1<sup>st</sup> respondent would submit that the 1<sup>st</sup> respondent sustained head injuries and was a minor, aged 15 years at the time of the accident. According to him, he was taking continuous treatment and even at the time of filing of their claim petition, he was unable to stand, sit and squat and was having chronic headache and giddiness and was unable to write freely. The disability certificate was also filed by the 1<sup>st</sup> respondent before the tribunal assessing the disability of the 1<sup>st</sup> respondent at 45% which was marked as Ex.P.10. He also submitted that the wound certificate, medical bills, Doctor's prescription, Doctor's advice, CT Scan and X-Ray were also filed before the tribunal which were marked as exhibits will reveal that the 1<sup>st</sup> respondent sustained severe head injuries as a result of the accident. Therefore, according to the learned counsel, the compensation awarded by the tribunal to the 1<sup>st</sup> respondent is a just compensation.

6. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following;





8. In the result,

(i) the appeal is partly allowed. No costs. Consequently, the connected M.P.No.1 of 2011 is closed.

(ii) the compensation awarded by the tribunal under the impugned award is modified and reduced from Rs.2,29,500/- to Rs.2,09,500/- along with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

(iii) It is represented that the entire award amount has already been deposited before the tribunal. The modified amount shall be deposited in any one of the Nationalised Banks till the minor respondent attains majority and the father of the minor shall be entitled to withdraw the accrued interest on the amount deposited once in three months.

(iv) The appellant is permitted to obtain refund of the excess amount lying to the credit of MCOP by filing an appropriate application.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr/prm

To

1. The Motor Vehicles Accident Claims Tribunal  
(Chief Judicial Magistrate),  
Dharmapuri.

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

+1cc to Ms.M.B.Surekha, Advocate sr.74427

+1cc to Mr.P.Mani, Advocate sr.74825

C.M.A.No.2100 of 2011

spd(co)

nr 09/12/2019