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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.668 OF 2015

AND

M.P.NO.1 OF 2015

The Branch Manager,
Oriental Insurance Co. Ltd.
Branch Office, No81-C, KRC Complex,
Chennai Salei,
Krishnagiri - 635 001.

...Appellant/2nd Respondent

Vs.

1. Minor Epsiba
Represented by her Next friend/
Father C.Arulanandham

... Respondent/Petitiner

2. R.Suresh

... Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgement dated 15.09.2014 made in MCOP.No.1105 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Krishnagiri.

For Appellant : Mr.S.Manohar

For Respondents : Mr.Mukund R.Pandiyan for R1

JUDGMENT

This appeal has been preferred by the appellant/Insurance company against the award made by the Tribunal directing them to pay a sum of Rs.4,49,350/-.

2. On 05.10.2010 at about 16.55 hours, when the minor first respondent was walking on the left side of the road to go to her house, at that time, the TVS Star City motorcycle bearing Registration No.TN/24/E.5459 belonging to the 2nd respondent which was driven in a rash and negligent manner at uncontrollable speed, dashed against the minor 1st respondent and caused accident. Due to the impact, the minor 1st respondent



sustained injuries all over the body. In respect of the injuries sustained, the minor injured filed a claim petition before the Motor Accident Claims Tribunal/Special Sub Court, Krishnagiri, claiming compensation of Rs.7,00,000/-. As against the claim made, the Tribunal has passed an award for a sum of Rs.4,49,350/- with the following breakup details:-

S.No.	Heads	Award amount Rs.
1.	Non pecuniary damages	4,00,000
2.	Discomfort, inconvenience and loss of earning to parents during the period of hospitalisation	25,000
3.	Medical and incidental expenses	14,350
4.	Future medical expenses	10,000
	Total	4,49,350

(Rupees four lakhs forty nine thousand three hundred and fifty only)

3. The appellant/insurance company denied the rash and negligent aspect on the part of the driver of the TVS Star City bike which caused accident. The appellant alleged that the driver of the two wheeler did not possess valid driving licence and it is a violation of policy condition. Apart from this, the amount of Rs.7 lakhs which is claimed under various heads is highly excessive and imaginary one.

4. The Tribunal while perusing the documents before him has given a finding regarding the negligence on the part of the rider of the two wheeler as per the evidence of PW1. The Tribunal also analysed the medical documents relating to the treatment and medical expenses and notwithstanding the disability of 45% assessed by P.W2, the Tribunal awarded a sum of Rs.4 lakhs under the head of non pecuniary damages. On the whole, a sum of Rs.4,49,350/- has been awarded under the various heads.

5. Aggrieved against the grant of Rs.4,00,000/- for 45 % permanent disability, the appellant Insurance company has preferred this appeal.

6. In the grounds of appeal, it is pleaded that for the disability of 45%, the sum of Rs.4 lakhs awarded, based on the assessment made by the Doctor PW2 is exorbitant and the sum



awarded for discomfort and loss of earning and future medical expenses is highly excessive, when there is no proof for continuous treatment.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. On perusal of records, it is observed that the Tribunal has assessed the compensation by examining the injured minor and also by verifying Ex.P2/the wound certificate issued by the Government Hospital, Krishnagiri. As per Ex.P2, the minor injured sustained swelling and pain in the left leg and abrasion of 2 X 2 cm over right forehead. Ex.P3 Discharge summary also revealed the fact that the minor injured had taken treatment for left leg fracture shaft of left tibia fracture, upper metaphysis of fibula. PW.2 was also examined by the Tribunal. The disability certificate/Ex.P6 issued by PW2/Doctor reveals that X-ray expert found that the surgery was done for the fracture of tibia in left leg and implant- Exit was removed. Hence, the disability sustained by the minor was discussed by the Tribunal by examination of PW 2 and also Ex.P3/Discharge summary.

9. While taking into consideration of 30 to 60 % disability, the Tribunal relied upon the decision of the Supreme Court of India reported in 2013 (2) TN MAC 338 (SC) in the case of Master Mallikarjun Vrs Divisional Manager, National Insurance Co., Ltd and another.

10. In Master Mallikarjun case supra, the injuries sustained by the minor were elaborately discussed and findings were rendered and the said factual findings is not applicable to the present case on hand. Hence, this Court is of the view that the percentage of disability taken by the Tribunal is on the higher side. However, considering the nature of injuries sustained by the minor claimant and disability she suffered, this Court feels it just and proper to fix disability at 35 % and hence a sum of Rs.3 lakhs has to be awarded. Similarly, on considering the fracture injuries sustained by the injured, this Court grants a sum of Rs.10,000/- under the head 'Attender Charges'. Accordingly, except the amount awarded under the non pecuniary damages/ damages and Attender charges, the amount awarded under other heads are confirmed as they do not require interference.

11. Considering the overall circumstances, the award as granted by the Tribunal is modified and re-structured and it is awarded under the following heads:-



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S.No.	Heads	sum awarded by the tribunal Rs.	sum modified by this Court Rs.
1.	Non pecuniary damages / Disability	4,00,000	3,00,000
2.	Discomfort, inconvenience and loss of earning to parents during the period of hospitalisation	25,000	25,000
3.	Medical and incidental expenses	14,350	14,350
4.	Future medical expenses	10,000	10,000
5.	Attendant Charges	-	10,000
	Total	4,49,350	3,59,350

Thus, the total amount of compensation to be awarded is fixed at Rs.3,59,350/-.

12. In the result, this Civil Miscellaneous Appeal is partly allowed, by reducing the total amount of compensation from Rs.4,49,350/- to Rs.3,59,350/-, which is payable with interest at 7.5% per annum from the date of petition till the date of deposit.

13. The award amount shall be deposited in any one of the National Banks, in a Fixed Deposit, till the 1st respondent/minor injured attains majority and the father of the 1st respondent is entitled to withdraw the accrued interest, once in three months, directly from the Bank, under direct intimation to the Tribunal. Consequently, the connected is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal/
Special Sub Court,
Krishnagiri.



2. The Section Officer, V.R.Section,
Madras High Court,
Chennai 104.

+1cc to Mr.S.Manohar, Advocate, S.R.No.57948

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.58181

C.M.A.No.668 of 2015
and M.P.No.1 of 2015

VGII(CO)
CS/03/01/2020