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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

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THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A.NO.1956 OF 2012

Minor Rajasekar
rep. by next friend mother Madhammal ...Appellant / Claimant

..Vs..

1.K.A.Abdul Hadhi & Bros.
(A partnership firm rep. by
Managing Partner K.A. Abdul Hadhi),
Dolath Beedi Mfrs.,
17, Fort Street,
Tirupattur,
Vellore District. ...1st Respondent / 1st Respondent

2.Oriental Insurance Company Ltd.,
Branch Office,
12, Katpadi Road,
Gudiyatham-632 602,
Vellore District. ...2nd Respondent / 2nd Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award passed by the learned Additional Sub Judge, (MACT), Krishnagiri in M.C.O.P.No.476 of 2009 dated 06.01.2012.

For Appellant	:	Mr.P.Mani
For Respondent-1	:	No Appearance
For Respondent-2	:	Mr.N.Sampath

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal / learned Additional Sub Judge, (MACT), Krishnagiri in M.C.O.P.No.476 of 2009 dated 06.01.2012, the appellant/claimant has preferred the present appeal.

2. Heard Mr.P.Mani, learned counsel appearing on behalf of the appellant and Mr.N.Sampath, learned counsel for the second respondent/Insurance Company. In spite of the notice served on the first respondent, none appears on his behalf. Hence, the appeal is taken up today for final disposal.



3. The brief facts of the case are as follows:

a) On 15.07.2006 at about 2.00 p.m., when the claimant/appellant was travelling in a motor cycle bearing registration No.TN-29-H-9241 as pillion rider along with two others in the said vehicle, the first respondent vehicle viz., Tempo Van bearing registration No.TN-23-W-5032 insured with the second respondent herein came in the opposite direction in a rash and negligent manner dashed against the motor cycle causing injuries to the driver of the motor cycle as well as the claimant/appellant herein. Hence, the claimant/appellant had filed a claim petition before the Tribunal claiming a sum of Rs.7 lakhs as compensation for the injuries sustained in the accident.

b) Before the Tribunal, witnesses P.W.1 to P.W.3 were examined and exhibits P1 to P11 were marked on the side of the claimants whereas R.W.1 was examined and exhibits R1 to R3 were marked on the side of the respondent Insurance Company. After analyzing both the oral and documentary evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle. Since the name of the driver of the Tempo Van was not found in the petition and he did not also have a proper and valid driving license at the time of the accident, the second respondent Insurance Company is absolved from the liability. However, the Tribunal has directed the Insurance Company to pay and recover the compensation amount of Rs.66,000/- with interest at the rate of 9% p.a. awarded to the claimant/appellant herein from the owner of the vehicle/first respondent herein.

c) The break-up details of the award passed by the Tribunal is as follows:

S. No.	Heads	Amounts (Rs.)
1	Temporary disability	40,000
2	Nutritious food	3,000
3	Attendant benefits	3,000
4	Pain and sufferings	10,000
5	Loss of amenities	10,000
	Total	66,000

4. Aggrieved over the same, the claimant/appellant has preferred the present appeal for enhancement of compensation.

5. The learned counsel for the appellant submitted that the Tribunal had erred in taking the percentage of disability



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assessed by the doctor P.W.3 / Dr.S.Krishnakumar wholly and only it has taken 20% disability to arrive at the loss of disability. He further submitted that taking into account 35% disability assessed by the doctor, the amount has to be modified under the said head. He also submitted that the amount awarded by the Tribunal under the other heads needs enhancement.

6. On the other hand, the learned counsel for the Insurance Company submitted that the Tribunal accepting their contentions in respect of violation of policy had absolved their liability but however directed the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle. He submitted that since there is violation of policy conditions, the Insurance company has to be exonerated from paying the compensation to the claimant and pleaded to direct the first respondent to pay the compensation amount.

7. On perusal of the records, it is seen that P.W.3 Dr.S.Krishnakumar had assessed the disability at 35% and hence this Court opines that the Tribunal had wrongly taken the disability at 20%. On fixing the disability at 35%, a sum of Rs.70,000/- has been arrived for the disability sustained by the claimant/appellant at the accident that took place on 15.07.2006. Considering the nature of injuries sustained by the claimant/appellant, the amount awarded under the heads of nutritious food and attendant benefits by the Tribunal are enhanced to Rs.5000/- each. In respect of other heads, this Court is of the view that the amount awarded by the Tribunal is reasonable and warrants no interference. In regard to the contention of the Insurance Company, this Court accepts the findings of the Tribunal in directing the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle as per the dictum laid down by the Hon'ble Apex Court in Anu Bhanvara etc. V. Iffco Tokio General Insurance Company Limited & Others in Civil Appeal Nos.6231-6232 of 2019. Hence the award passed by the Tribunal is modified by this Court to the following effect:-

S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Temporary disability	40,000	70,000
2	Nutritious food	3,000	5,000
3	Attendant benefits	3,000	5,000
4	Pain and sufferings	10,000	10,000
5	Loss of amenities	10,000	10,000
	Total	66,000	1,00,000



8. Accordingly, the Civil Miscellaneous Appeal filed by the claimant/appellant is allowed. As per the findings of the Tribunal, this Court directs the second respondent/Insurance Company to pay and recover the compensation awarded to the claimant from the owner of the vehicle/first respondent herein. The Insurance Company is directed to deposit the entire/balance of the compensation amount awarded to the appellant less the amount deposited if any, before the Tribunal within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the same on filing appropriate petition before the Tribunal. It is also made clear that the rate of interest would be 7.5% p.a. for the enhanced compensation amount from the date of appeal till the date of realization.

9. In fine, the Civil Miscellaneous Appeal is allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

DP

To

1.The Additional Sub Judge,
(The Motor Accident Claims Tribunal),
Krishnagiri.

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

+1cc to Mr.P.Mani, Advocate SR.No.4420

C.M.A.No.1956 of 2012

PVS(CO)
RVM(04/10/2021)