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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.329 OF 2015

The Branch Manager,
M/s.United India Insurance Co.Ltd.,
Pallivasal Street, Perambalur.

.. Appellant/2nd Respondent

..Vs..

1. Muthamizhselvan (Minor)
(Rep.by Father & NF Arokiadoss)

.. 1st Respondent/Petitioner

2. S.K.Suresh

.. 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.02.2014 made in MC.O.P.No.421 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Appellant : Ms.Harini
For Mr.N.Vijayaraghavan

For R1 : Mr.F.Terry Chella Raja

For R2 : No appearance

JUDGMENT

The Insurance Company is the appellant herein. C.M.A is filed challenging the award passed in M.C.O.P.No.421 of 2012, on the point of quantum.

2. The factum of the accident, manner of the accident and rash and negligent driving on the part of the driver of the offending vehicle, are not in dispute and hence, the finding in this regard is hereby confirmed.



3. The brief averments made in the claim petition are that on 11.02.2012,, at about 08.30 p.m, the claimant herein along with his father were walking along Angarai Sandhaipettai Road, from West to East, keeping to his extreme left side of the said road and at that time Bajaj Discover Motor Cycle bearing Registration No.TN 68 B 6651 belonging to the second respondent and insured with the appellant, which was coming behind the claimant and driven by its rider, at a very high speed, recklessly, rashly and negligently without observing the Road Traffic Rules and Regulations, and dashed on the back of the cliamant.

4. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.3,70,000/- with interest at 7.5% per annum in M.C.O.P.No.421 of 2012.

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

6. The learned counsel for the appellant/Insurance Company submitted that the injured is aged about 10 years and was studying 5th standard at the time of the accident. P.W.2 Doctor Saravanan had examined the injured and issued Ex.P6 Wound Certificate based upon Ex.P7 X-Ray Report. As per the deposition of Doctor Saravanan (P.W.2), the injured was studying in school and sustained injury in the left hand and left clavicle bone and the Doctor assessed the disability at 31%. The Tribunal has taken it at 29% and followed the decision reported in 2013 (2) TN MAC Page 338 (SC) [Master Mallikarjun Versus Divisional Manager National Insurance Company Limited & Another], wherein it is held as follows:-

"Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts. We are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for Treatment, Attendant etc., should be if the disability is above 10% and up to 30% to the whole body. Rs. 3 lakhs upto 60% Rs.4 lakhs upto 90% Rs.5 lakhs and above".

and also followed the decision reported in ii) 2013 (2) TN MAC Page 95 (SC) [Kum.Michael Versus Regional Manager,



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Oriental Insurance Company Limited & another], wherein it is held as follows:

"Having bestowed our serious consideration and having noted the various disadvantages suffered by the appellant by virtue of the accident. We are convinced that the appellant is entitled for still higher amount that what has been granted by the Tribunal as well as the High Court on account of pain and sufferings as well as Loss of Amenities. As held by us earlier though it will be impossible to make a precise assessment of the pain and suffering of the appellant considering the age at which the appellant met with the accident and the consequent disability an also taking note of the deprivation of better prospects in the life of the appellant due to the physical disability suffered. We determine the compensation in a sum of Rs.4 lakhs".

7. After going through the evidence of P.W.2 and after hearing the submissions made by learned counsel for the Insurance Company, I find that disability has to be fixed only at 29%. Accordingly, the disability of 29% is fixed for whole body based on the above decision in Master Mallikarjun's case, and Rs.3,00,000/- has been awarded by the Tribunal.

8. I find with regard to 'permanent disability & pain and suffering', 'medical expenses', 'transportation', 'nutrition' and 'attender charges', 'discomfort and loss of income' and 'loss of amenities' though there are some minor variations as a whole, award is found to be reasonable on those heads.

9. Taking into consideration the nature of the injury sustained by the injured, on the head of 'permanent disability' and 'pain and suffering' the Tribunal has awarded a sum of Rs.3,00,000/- which is hereby confirmed and towards 'medical expenses, transportation, nutrition and attender charges' extra nourishment' a sum of Rs.20,000/- awarded by the Tribunal is hereby confirmed and 'discomfort and loss of income' a sum of Rs.25,000/- awarded by the Tribunal is hereby confirmed and towards 'Loss of amenities' a sum of Rs.25,000/- awarded by the Tribunal is hereby confirmed.

10. In this view of the matter, the finding rendered by the Tribunal with regard to the whole body disability alone is



modified. However on the point of quantum of compensation, the same is hereby confirmed.

Head	Tribunal	High Court
Permanent disability & Pain and sufferings	Rs. 3,00,000/-	Rs. 3,00,000/-
Medical expenses, Transportation, nutrition and attender charges	Rs. 20,000/-	Rs. 20,000/-
Discomfort and loss of income	Rs. 25,000/-	Rs. 25,000/-
Loss of amenities	Rs. 25,000/-	Rs. 25,000/-
Total	Rs. 3,70,000/-	Rs. 3,70,000/-

10. In the result,

(i) This C.M.A is dismissed. No costs.

(ii) If the award amount with accrued interest has not been deposited, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with costs, to the credit of M.C.O.P.No.421 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the Tribunal is directed to deposit the same in any Nationalized Bank in any Fixed Deposit Scheme till he attains majority and the interest thereon shall be withdrawn by the guardian (father) once in three months.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Perambalur.



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

+1cc to Mr.T.Gopinath, Advocate, S.R.No.20088

C.M.A.No.329 of 2015

RR(CO)
CS/25/11/2021