IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2424 of 2016 &

CMP.No.17056 of 2016

The National Insurance Company Ltd.,
No.751, Mount Road,
Chennai – 6. ... Appellant/2nd Respondent

Vs

1.J.Ringu
(Minor represented by her father Jaburaram)
... 1st Respondent/Petitioner

2.Thalapathi Kumara Vickram. ... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment passed in MACTOP.No.57 of 2014 dated 21.07.2015 on the file of the Motor Accident Claims Tribunal, 5th Small Causes Court, Chennai.

For Appellant : Ms.N.B.Surekha

For Respondent 1 : Mr.P.Chinnaraj

For Respondent 2 : Not ready in notice

JUDGMENT

(Heard through Video conferencing)

This civil miscellaneous appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned award dated 21.07.2015 passed by the Motor Accident Claims Tribunal (5th Court of Small Causes, Chennai) in MCOP.No.57 of 2014.

2. The Insurance Company has challenged the impugned award only on the ground that the quantum of compensation awarded by

the Tribunal to the first respondent/claimant is excessive.

3. Heard Ms.N.B.Surekha, learned counsel for the Appellant Insurance Company and Mr.P.Chinnaraj, learned counsel for the first respondent/claimant. The second respondent has remained exparte both before the Tribunal as well as this Court.

4. The Tribunal under the impugned award directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.4,07,000/- as detailed hereunder:

Heads	Award Amount (Rs.)
Medical Expenses	2,000/-
Attender Charges	5,000/-
Disability Compensation	4,00,000/-
Total	4,07,000/-

5. The learned counsel for the Appellant Insurance company would submit that the Tribunal has erroneously applied the ratio laid down by the Hon'ble Supreme Court in the case of Mallikarjun vs. National Insurance Company and another reported in 2013 SC SCJ 2445 while assessing the disability compensation payable to the first respondent/claimant. She would submit that the injuries sustained by the first respondent/claimant will not enable her to claim compensation as per the decision of the Hon'ble Supreme Court in Mallikarjun's case referred to supra. She would submit that the first respondent/claimant has sustained only one fracture namely shaft of femur of the right. She would also submit that excepting for filing of OP chit, which has been marked as Ex.P6 before the Tribunal, the first respondent/claimant has not filed any other document to prove that due to the injuries sustained by her, she was hospitalised for a long period of time.

6. As rightly contended by the learned counsel for the Appellant Insurance Company, though the first respondent/claimant has suffered only one fracture as seen from the disability certificate which has been marked as Ex.P13 before the Tribunal, the compensation assessed by the Hon'ble Supreme Court in Mallikarjun's case referred to supra cannot be made applicable to the facts of the instant case. In Mallikarjun's case referred to supra, the accident victim was hospitalised for 58 days continuously and he has sustained multiple grievous injuries and he had also undergone several surgeries. But in the case on hand, excepting for only one

fracture and when the accident victim has also not filed sufficient documents to prove that she was hospitalised for the said fracture, the Tribunal ought not to have applied the ratio laid down by the Hon'ble Supreme Court in Mallikarjun's case referred to supra. Therefore, this Court is of the considered view that the ratio laid down by the Hon'ble Supreme Court in Mallikarjun's case referred to supra will not apply to the facts of the instant case.

7. In view of the above, this Court is constrained to refix the compensation in the following manner:

(a) The accident happened in the year 2013. The Doctor has assessed the disability of the first respondent/claimant at 35%. For an accident of the year, it is settled practice followed by the Courts that the disability compensation will have to be assessed at Rs.3,000/- per percentage of disability. In the instant case, the first respondent/claimant has suffered 35% disability and hence, the disability compensation is assessed by this Court at Rs.1,05,000/- calculated at Rs.3,000/- per percentage of disability for 35% disability.

(b) The Tribunal has awarded a compensation of Rs.2,000/- towards medical expenses which is supported by bills (Ex.P9) and the same is confirmed by this Court.

(c) The Tribunal has also awarded a compensation of Rs.5,000/- towards attender charges which in the considered view of this Court is low and the same has to be necessarily enhanced. Accordingly, the compensation towards attender charges is enhanced to Rs.20,000/- by this Court.

(d) After giving due consideration to the nature of injuries sustained by the first respondent/claimant as stated supra, this Court awards a compensation of Rs.40,000/- towards pain and suffering, Rs.13,000/- towards transportation, Rs.15,000/- towards extra nourishment, Rs.50,000/- towards loss of amenities and Rs.5,000/- towards Future Medical Expenses.

8. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Amount Awarded by this Court (Rs.)
Disability	4,00,000/-	1,05,000/-
Medical Expenses	2,000/-	2,000/-
Attender charges	5,000/-	20,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Amount Awarded by this Court (Rs.)
Pain and suffering	--	40,000/-
Transportation	--	13,000/-
Extra nourishment	--	15,000/-
Loss of amenities	--	50,000/-
Future medical expenses	--	5,000/-
Total	4,07,000/-	2,50,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed by refixing the compensation payable by the Appellant Insurance Company to the first respondent/claimant. The Appellant Insurance Company is directed to deposit the modified award amount of Rs.2,50,000/- after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.57 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, since the first respondent/claimant is a minor, the Tribunal shall deposit the amount lying to the credit of MCOP.No.57 of 2014 in fixed deposit in any one of the Nationalised Bank till she attains the age of majority. If the minor attains the age of majority, it is open for her to file a formal petition to declare her as major. The father of the minor/first respondent is permitted to withdraw the interest accrued once in six months for the welfare of the minor.

10. Since the compensation awarded by the Tribunal is reduced by this Court and if the Appellant Insurance company has already deposited the entire amount awarded by the Tribunal, it is open for the Appellant Insurance company to file an appropriate application to withdraw the excess amount deposited by them before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

1. The 5th Judge,
   Small Causes Court,
   Chennai.

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

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.38271

C.M.A.No.2424 of 2016

SSD(CO)
SU(09/11/2021)