



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2686 of 2016

and

C.M.P.No.19264 of 2016

The Oriental Insurance Co. Ltd.,
Divisional Office-III,
3821-Trichy Road,
Coimbatore - 641 108,
Coimbatore District.

.. Appellant/3rd Respondent

Vs.

1. Minor S.Subashini
Rep by NF and Mother Anjali

2. U.Suresh

3. M/s.Saradha Dairy Products Ltd.,
126, Arts College Road,
Coimbatore 641 018,
Coimbatore District.

.. Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 15.02.2016 made in M.C.O.P.No.433 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

For Appellant	:	Mr.S.Arunkumar
For Respondents	:	No appearance

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the insurance company challenging the award dated 15.02.2016, passed by the Motor Accidents Claims Tribunal, Sub Court, Dharapuram in M.C.O.P.No.433 of 2012.

2. The appellant insurance company has challenged the award primarily on the ground that the first respondent/claimant is not entitled to compensation of Rs.3,09,664/- towards medical expenses as determined by the Tribunal, since the said amount was already paid by the owner of the vehicle insured with the appellant.



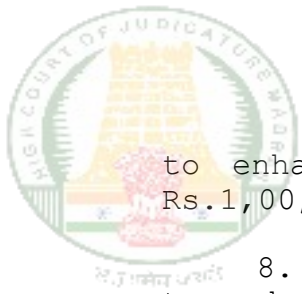
the attention of this Court to the medical bills which are marked as Ex.P9 before the Tribunal totally amounting to Rs.3,09,664/- and would submit that the said bills have been raised only in the name of the third respondent, the owner of the insured vehicle and only xerox copies of the said bills were filed by the claimant before the Tribunal and despite the objections raised by the learned counsel for marking the xerox copies, the Tribunal has marked the same after recording the objections.

4. The respondents have been served through substituted service by effecting paper publication as per the order dated 14.06.2021, passed by this Court, however, they have chosen not to appear despite their names have been printed in the cause list today.

5. This Court has perused and examined the medical bills which have been marked as Ex.P9 before the Tribunal totaling a sum of Rs.3,09,664/-. As rightly contended by the learned counsel appearing for the appellant, all the medical bills are xerox copies and the said bills were also raised only in the name of the third respondent, the owner of the insured vehicle. This Court has also perused and examined the deposition of P.W.1 before the Tribunal and finds that the counsel for the insurance company had objected to the marking of copies of medical bills by the claimant and only after recording the said objection, the Tribunal has marked the exhibit as Ex.P9. The consistent stand taken by the appellant insurance company before the Tribunal can be seen from the documents available on record that payment towards medical bills were paid by the third respondent, owner of the insured vehicle and therefore the claimant is not entitled for compensation towards the medical expenses.

6. This Court, after perusing and examining the medical records and after considering the deposition of P.W.1 before the Tribunal, is of the considered view that the Tribunal has failed to note that a sum of Rs.3,09,664/- which was incurred towards medial expenses of the claimant as per the medical bills, marked as Ex.P9, were in fact paid by the third respondent (insured) and therefore, the claimant is not entitled for the said compensation. Therefore, this Court is of the considered view that by total non application of mind to the evidence available on record, the Tribunal has awarded the compensation of Rs.3,09,664/- towards medical expenses for the claimant under the impugned award.

7. With regard to award of compensation under other heads are concerned, this Court is of the considered view that the compensation awarded by the Tribunal towards disability suffered by the claimant at Rs.50,000/- is low and it has to be enhanced. After giving due consideration to the crush injury sustained on the foot by the claimant, being a girl child and on account of disfigurement, this Court deems it fit



to enhance the disability compensation from Rs.50,000/- to Rs.1,00,000/-.

8. Insofar as the compensation awarded by the Tribunal towards pain and suffering, extra nourishment, Transportation and Attendant charges are concerned, the same will have to be enhanced. Accordingly, this Court enhances the same to Rs.35,000/-, 15,000/-, 10,000/- and Rs.10,000/- respectively.

9. As seen from the injuries sustained by the 1st respondent / claimant, she has sustained disfigurement in her body and further being a Minor, compensation ought to have been awarded by the Tribunal towards her disfigurement which has been omitted erroneously under the impugned award. After giving due consideration to the same, this Court awards a compensation of Rs.30,000/- towards loss of amenities

10. For the foregoing reasons, the compensation awarded by the Tribunal is reduced to Rs.2,00,000/- from Rs.3,94,864/- as detailed hereunder:

Sl . No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or set aside or granted or reduced (Rs.)
1.	Disability at 25%	50,000	1,00,000	Enhanced
2.	Pain and Sufferings	25,000	35,000	Enhanced
3.	Medical expenses	3,09,664	- - - - -	Set aside
4.	Extra nourishment	4,000	15,000	Enhanced
5.	Transport expenses	4,000	10,000	Enhanced
6.	Attendant Charges	2,200	10,000	Enhanced
7.	Loss of amenities and disfigurement	-----	30,000	Awarded
	Total	3,94,864	2,00,000	Reduced amt Rs.1,94,864/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,94,864/- is hereby reduced to Rs.2,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.433 of 2012, on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram. In case excess amount



has already been deposited by the appellant/insurance company before the Tribunal, they are permitted to withdraw the same. On such deposit of the award amount now determined by this Court along with interest and cost by the appellant/insurance company, the same shall be deposited in a fixed deposit in a nationalised bank initially for a period of one year and the next friend and Mother of the minor first respondent Mrs.Anjali is permitted to withdraw the accrued interest periodically once in three months. The first respondent/claimant is entitled to refund of Court fee, if any, on the reduced amount of compensation now determined by this Court. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Sub Court, Dharapuram.
2. The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.49356

C.M.A.No.2686 of 2016
and C.M.P.No.19264 of 2016

SVI (CO)
GN(16/11/2021)