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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1504 of 2020

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Cuddalore.

... Appellant/2nd Respondent

Vs.

1.Minor Amsavalli,

Represented by Mother Manimegalai ...1st Respondent/Claimant

2.Manimaran

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.11.2019 made in M.C.O.P.No.64 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tittagudi.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : No appearance

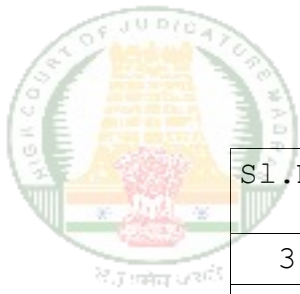
JUDGMENT

The Insurance Company is the appellant in this appeal and is aggrieved by the Judgment and decree dated 28.11.2019 passed by the Motor Accidents Claims Tribunal, Sub Court, Tittagudi in M.C.O.P.No.64 of 2017.

2. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.7,00,000/- as compensation to the 1st respondent/claimant.

3. The Tribunal has awarded the aforesaid compensation under the following heads:-

Sl.No.	Heads of Compensation	Amount Awarded by the Tribunal
1.	Pain and Sufferings	Rs.5,00,000/-
2.	Medical Expenses	Rs.1,00,000/-



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Sl.No.	Heads of Compensation	Amount Awarded by the Tribunal
3.	Extra Nourishment	Rs.1,00,000/-
	Total	Rs.7,00,000/-

4. It is noticed that the claim petition was filed by the mother of the Minor Amsavalli who aged about 7 years at the time of the claim petition for only amount of Rs.3,00,000/-. The injuries described in the claim petition are as under:-

- (i) Injuries in lower lip and nose
- (ii) Suppressed in the right leg
- (iii) Injuries in the left leg
- (iv) Abrasion in the right hand
- (v) Injuries in both knees, chest and head

5. It is noticed that Ex.P1-Disability Certificate indicates that there was 72% of Permanent Disability. P.W.1-Doctor also confirmed the same on his deposition and deposed that he assessed the disability based on Ex.P2-X Ray. It is however not clear as to how the above disability has been arrived only based on Ex.P2-X Ray. Be that as it may, I set aside the impugned Judgment and decree to the extent which holds that the appellant/Insurance Company is liable to pay the compensation of Rs.7,00,000/- and remit the case back to the Tribunal to pass fresh order.

6. The Tribunal shall therefore endeavour to pass fresh order by considering the available evidences on record after referring the 1st respondent/claimant to a Medical Board for ascertaining the functional disability, within a period of six months from the date of receipt of a copy of this Judgment. The Tribunal is also directed to keep the decision of the Hon'ble Supreme Court in Mallikarjun Vs Divisional Manager, National Insurance Company Limited and Another, (2014) 14 SCC 396 while passing a fresh order.

7. Accordingly, this Civil Miscellaneous Appeal is allowed by way of remand. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
Sub Court, Tittagudi.

2. The Section Officer,
Vernacular Section,
Madras High Court.

+1CC to Mr.S.Dhakshnamoorthy, Advocate, Sr.No.24883

C.M.A.No.1504 of 2020

BS (CO)

K.RK. (08.10.2021)