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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.2947 of 2019
and
C.M.P.No.15651 of 2019

M/s New India Assurance Company Limited,
Having its Branch Office at
No.17-B, Gandhi Road,
LIC of India North Branch,
Hasthampatti,
Salem.

...Appellant/3rd Respondent

Vs.

1.V.Velusamy

..1st Respondent/Petitioner

2.K.Dakshynamoorthy

3.S.Killaivalavan

4.A.Prathap

5.P.Jothiammal

6.M/s The Reliance General Insurance Co. Ltd.,
Having Branch Office at
Sakthi Supermarket 3rd Floor,
No.408, Perundurai Road,
Erode Taluk and District.

...Respondents 2 to 6/
Respondents 1,2,4 to 6

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 06.02.2019 passed in MCOP No.754 of 2017 by the Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), at Erode.



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For Appellant : Mr.J.Michael Visuvasam

For Respondents: Mr.R.Nalliyappan (for R1)
Mr.S.Arunkumar (for R6)
R2,R3 & R5- No Appearance
R4- Door Locked

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, Special Sub Judge, Erode in MCOP No.754 of 2017 dated 06.02.2019.

2.This is the case of injury. The case of the claimant is that on 10.01.2017 at about 07.00 p.m, one Prathab, who is the claimant in CMA No.2810 of 2019, was riding a motorcycle bearing Reg.No.TN-56-H-9203 along with the claimant Velusamy and another person as pillion riders on Kovai to Salem NH 47 main road from west to east direction towards Perundurai in a slow speed, cautious manner and adhearing the traffic rules and regulations and also extreme left side of the road. While they were proceeding near Saralai Bharathi School, a Car bearing Reg.No.TN-69-J-7042 suddenly and abruptly came from the school to enter into NH road from north to south direction driven by its driver in a rash and negligent manner without adhering the traffic rules and regulations, without blowing horn and unmindful of main road and dashed against the claimant's motorcycle. In the result, the rider Prathab and the pillion rider Velusamy were fell down on the road and sustained bone fracture and grievous injuries. Alleging that the accident had taken place due to the rash and negligent driving of the Car, the claimant laid petition, claiming compensation of Rs.1,50,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, occupation, medical expenses and nature of injuries sustained by the claimant. It was also contended that the claim is excessive.

4.To substantiate the case, on the side of the claimant, P.Ws.1 to 6 were examined and Exs.P.1 to Ex.P.53 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and Exs.R.1 to R5 were marked.



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5.The Tribunal, after considering the oral and documentary evidence held that the driver of the Car was responsible for the accident and awarded compensation to the claimants under the following heads:-

Heads	Rs.
Loss of Income	60,000/-
Transport Expenses	50,000/-
Extra nourishment	2,16,000/-
Damages for clothes and Articles	500/-
Medical Expenses	25,22,900/-
Pain and Suffering	7,00,000/-
Disability and loss of earning power	58,93,200/-
Total	94,42,600/-
Less 10% for violation of M.V.Rules	9,44,260/-
Award amount	84,98,340/-
Rounded off	84,98,300/-

6.Assailing the said award, the appellant Insurance Company has filed this appeal. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

7.The learned counsel for the appellant Insurance Company has contended that the award is on the higher side by wrongly fixing notional monthly income of Rs.20,000/- with 40% future prospects and it requires reduction. He would further contend that the Tribunal erred in awarding Rs.6,48,000/- towards future medical expenses and Rs.5,00,000/- for attendant charges. The learned counsel would further contend that the Tribunal has granted a sum of Rs.2,16,000/- for extra nourishment, which is highly excessive and unreasonable. Hence, he seeks reduction of the award amount.

8.Per contra, the learned counsel appearing for the respondent/claimant would submit that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.



9.This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company and the learned counsel appearing for the respondent/claimant and perused the materials available on record.

10.A perusal of records would show that the claimant is a student, but the Tribunal has fixed the notional monthly income as Rs.20,000/-. Hence, this Court fixed the monthly notional income of the claimant as Rs.10,000/- and by adding 40% towards future prospects, notional income works out at Rs.14,000/-. By applying multiplier '18', this Court here awards only Rs.30,24,000/- ($14,000 \times 12 \times 18 = 30,24,000/-$) towards Disability and Loss of earning power. Further, considering the age of the deceased and the nature of injuries sustained by him, the amount awarded under the other heads, namely, loss of income, transportation, extra nourishment, damage for clothes and articles, medical expenses and pain & suffering remains unaltered. Further, the rate of interest fixed by the Tribunal as 7.5% is unaltered. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Rs.
Loss of Income	60,000/-
Transport Expenses	50,000/-
Extra nourishment	2,16,000/-
Damages for clothes and Articles	500/-
Medical Expenses	25,22,900/-
Pain and Suffering	7,00,000/-
Disability and loss of earning power	30,24,000/-
Total	65,73,400/-
Less 10% for violation of M.V.Rules	6,57,340/-
Award amount	59,16,060/-
Rounded off	59,16,000/-

11.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any,



within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skn

To

1.The Motor Accidents Claims Tribunal,
The Special Subordinate Court, Erode

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 46268

+1 CC to Mr.S.Arunkumar, Advocate sr 46215.

C.M.A.No.2947 of 2019
and
C.M.P.No.15651 of 2019

NRJK (CO)
SP (21/01/2022)