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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

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

C.M.A.No.1965 of 2021

United India Insurance Company Ltd.,
7A, Pandiyan Building, West Veli Street,
Madurai - 625 001.

...Appellant/2nd Respondent

Vs.

1.M.A.Hari Viknesh

...1st Respondent/Petitioner

2.A.Sakthivel

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 26.06.2020 made in MCOP No.2362 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.1), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.Sivakumar (for R1)
R-2 No Such Addressee

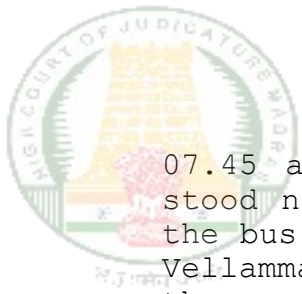
JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

As against the award passed in MCOP No.2362 of 2016 dated 26.06.2020, by the Motor Accident Claims Tribunal, (Special Sub-Court No.1), Salem, this appeal has been filed by the Insurance Company.

2.Facts in nutshell:-

This is the case of injury. On 24.06.2016, the claimant in order to attend his classes at Vellammal Medical College, Madurai, travelled in a private bus bearing Reg.No.TN-58-AK-1131 at Pandikovil Ring Road Bus Stop, which was coming from Mattuthavani Bus stand and proceeding towards Virudhunagar. When the bus was nearing Vellammal Hospital Bus Stop, at about



07.45 a.m, the claimant got up from his seat and moved and stood near the stair case of the bus. The bus driver drove the bus in a rash and negligent manner and turned the bus near Vellammal Hospital Canteen. In the impact, the deceased was thrown out from the bus and sustained grievous and multiple injuries all over the body. Due to the above said incident, the claimant was unconscious. Immediately, he was taken to Vellammal Medical College Hospital, where he was treated in ICU under ventilator support and treated as inpatient for more than 48 days. At that time, surgeries were conducted. Thereafter, he has taken treatment at SIMS Hospital, Salem, Aravind Eye Hospital, Madurai and Vellammal Speciality Hospital as inpatient. Due to the accident, his study was affected and he could not complete his M.B.B.S Course. Since the accident had occurred only due to the rash and negligent driving of the driver of the second respondent bus, he filed the claim petition before the Tribunal seeking compensation of Rs.1,00,00,000/-.

3.The appellant Insurance Company filed their counter disputing the manner of accident, age, avocation, qualification and income of the injured claimant and its liability to pay the compensation. It was also contended that the claim is excessive.

4.To substantiate the case, on the side of the claimant, he examined himself as P.W.1 and Exs.P.1 to Ex.P.28 and Ex.C.1 were marked. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the bus was responsible for the accident and awarded compensation of Rs.57,67,076/- to the claimant along with interest at the rate of 7.5% per annum. Assailing the award, the appellant/Insurance Company has filed the present appeal challenging the negligence and quantum.

6.The learned counsel for the appellant/Insurance Company Mr.D.Bhaskaran, has contended that at the time of accident, the claimant travelled foot board, however, the Tribunal without considering the same, fixed the entire negligence upon the driver of the bus. He has further contended that though the Tribunal has awarded Rs.30,24,000/- towards loss of future income by applying multiplier method, has awarded Rs.1,80,000/- under the head of permanent disability by applying percentage method. The amount awarded under the remaining heads are also on the higher side. Hence, the amount awarded under the various heads has to be reduced.

7.Per contra, the learned counsel appearing for the first respondent/claimant Mr.S.Sivakumar, argued that the impugned Award 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.



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

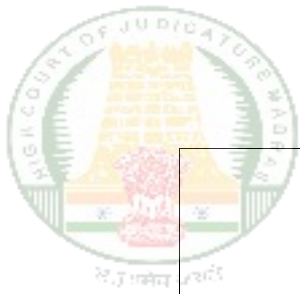
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9. In the matter on hand, perusal of the impugned award would show that the Tribunal has awarded Rs.30,24,000/- towards loss of future income by applying multiplier method. Apart from this, Rs.1,80,000/- has been awarded towards permanent disability by applying percentage method, which is contrary to the decision of the Apex Court. Hence, the amount of Rs.1,80,000/- awarded under the head of permanent disability is set aside.

10. A perusal of the First Information Report (Ex.P.1) would show that the father of the claimant gave complaint, wherein it has been stated that his son, the injured claimant was travelling in Foot board at the time of accident. Hence, we fix the negligence upon the claimant at 10%. Though the learned counsel appearing for the appellant/Insurance Company has contended the amount awarded in the remaining heads are on the higher side, we are of the view that the amount awarded towards Transportation and Attender Charges are meagre. Hence, amount of Rs.25,000/- awarded towards Transportation is enhanced to Rs.50,000/- and Rs.30,000/- towards Attender Charges is enhanced to Rs.1,00,000/-. Considering the nature of injuries, period of treatment and the qualification of the claimant, the amount awarded under the remaining heads are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed.

11. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Pain and Sufferings	1,00,000/-	1,00,000/-	confirmed
Medical Expenses	21,07,076/-	21,07,076/-	confirmed
Transportation	25,000/-	50,000/-	enhanced
For Extra Nourishment	50,000/-	50,000/-	confirmed
For Attender Charges	30,000/-	1,00,000/-	enhanced
Damage to cloth	1,000/-	1,000/-	confirmed
Loss of Amenities	50,000/-	50,000/-	confirmed
Loss of Future	30,24,000/-	30,24,000/-	confirmed



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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
For Permanent Disability	1,80,000/-	Nil	set aside
Loss of Marriage Prospects	2,00,000/-	2,00,000/-	confirmed
Total	57,67,076/-	56,82,076/-	Reduced
Rounded off		56,82,000/-	
Deduction for 10% contributory negligence		5,68,200/-	
Total Compensation		51,13,800/-	

12. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.57,67,076/- is reduced to Rs.51,13,800/-. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.51,13,800/- 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 Judgment. On such deposit, the claimant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount if already withdrawn. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

skn

To

1.The Special Sub Judge No.1
The Motor Accidents Claims Tribunal
(Special Sub-Court No.1), Salem.

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

+1cc to Mr.S.Sivakumar, Advocate SR. No. 29254
+1cc to Mr.D.Bhaskaran, Advocate SR. No. 28413

C.M.A.No.1965 of 2021