



C.M.A.No.3595 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2023

Pronounced on : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3595 of 2013

Minor Pradeep ... Appellant
(Minor being represented by Natural guardian and Mother
D.Umamaheswari)

vs.

1.K.Raju
2.V.Sumathi
3.The New India Assurance Co. Ltd.,
1st Floor, Amman Complex,
No.1360, E.V.N.Road,
Erode.
4.Dhandapani
5.National Insurance Company Ltd.,
Gobichettipalayam Town,
Gobichettipalayam.
6.V.Karikalan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Award of the Motor Accident Claims Tribunal (II Additional District Court), Erode in M.C.O.P.No.92 of 2011 dated 28.06.2013.



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For Appellant : Ms.H.Kavitha

For 3rd Respondent : Mr.C.Ramesh Babu

For 5th Respondent : Mr.K.Padmanabhan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants / claimants herein against the Judgment and decree passed in M.C.O.P.No92 of 2011 dated 28.06.2013 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court), Erode for enhancement of compensation.

2. The claimant had filed this claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- in M.C.O.P.No.92 of 2011 from the respondents.

3. In M.C.O.P.No.92 of 2011, the learned Tribunal, upon considering the evidence, has passed an award for an amount of Rs.54,600/- was granted towards compensation and payable by the third respondent / Insurance Company with 7.5% interest from the



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date of filing of the claim petition till the date of realization.

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4. It is the evidence of P.W.1 that on 16.05.2010 at about 11.40 am., one Shanmugam along with his daughter Umamaheswari, her minor children Madhanraj and minor Pradeep while they were proceeding in the TATA Indica Car bearing registration No.TN 07 AY 5946 from Erode to Gobichettipalayam near Kullapalayam Pirivu, a bus bearing registration No.TN 33 AD 9519 came at a high speed and driven by the driver in a rash and negligent manner, from the opposite direction and dashed against the car. Eventually, the car got heavily damaged and the said Shanmugam died on the way to the hospital and others sustained serious injuries and fractures, is not in dispute.

5. Since as the claim petition is filed based on a same accident the claim petition has been taken together by recording evidence, judgment in the M.C.O.P came to be passed by the learned Tribunal.

6. To substantiate the claims putforth in the claim petition four



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witnesses one of the injured Umamaheswari, Doctor Periyasamy, Doctor Ramamoorthy, V.V.Mathiyazhagan have been examined as P.W.1 to P.W.4. Exs.P1 to P39 have been marked. On the third respondent side K.Raju, driver of the 2nd respondent bus was examined as R.W.1. No document was marked by the respondent's side.

7. On behalf of the third respondent resisted the above said claims by way of filing counter as follows:

The petitioners were put to proof of the accident, age, occupation and income of the deceased are not admitted by the third respondent and the claim is excessive.

8. On behalf of the fifth respondent / National Insurance Company Limited, Chennai the claim petitions are resisted by filing counter as follows:

The accident took place only due to the negligent driving of the driver of the bus namely first respondent. The case was registered against the first respondent, driver of the bus. The fifth respondent /



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Insurance Company is not liable to pay any compensation and the claim is excessive.

9. The learned counsel for the appellant / claimant minor Pradeep would strenuously contend that the disability was assessed by the Doctor as 12% was taken as 7% by the tribunal is not correct. it is his further argument that the amounts awarded for transport expenses, extra nourishment, pain and sufferings are not sufficient.

10. The learned counsel for the third respondent / Insurance Company would strenuously argue that fractures cannot be considered as a disability. Considering the said injuries, the compensation awarded by the tribunal at Rs.54,600/- is a reasonable one and needs no interference.

11. The learned counsel for the fifth respondent / National Insurance Company would putforth that the tribunal has not fastened liability against the fifth respondent. The stand of the claimants that due to the rash and negligent driving of the driver of



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the bus only accident happened was accepted by the tribunal and consequently the owner of the bus and the Insurance Company of the bus namely third respondent were held jointly and severally liable to pay compensation. The First Information Report was also registered against the driver of the bus namely the first respondent herein. Therefore, the order of the tribunal be confirmed.

12. It is the evidence of P.W.1 that her son minor Pradeep suffered fracture of nasal bones. To that effect Doctor Periyasamy has been examined as P.W.2. The above said Doctor has assessed the partial permanent disability at 12%. The minor was studying at VIII standard at the relevant point of time. He had taken treatment in Senthil Multi Speciality Hospital, Erode as an inpatient from 16.05.2010 to 25.05.2010 as per Ex.P25 discharge summary. For pain and sufferings an amount of Rs.20,000/- is granted in addition to the amount already awarded by the tribunal. For the partial permanent disability suffered by the minor, an amount of Rs.10,000/- is granted in addition to the amount already granted by the tribunal and in all other aspects the amounts granted by the tribunal appears to be



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reasonable and needs no interference. The compensation awarded is

reworked and tabulated as follows:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Transport to Hospital	Rs.5,000/-	Rs.5,000/-	Confirmed
2	Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
3	Medical Expenditure	Rs.29,100	Rs.29,100/-	Confirmed
4	Pain and Sufferings	Rs.5,000/-	Rs. 20,000/-	Enhanced
5	Partial Permanent Disability	Rs.10,500/-	Rs.20,500/-	Granted
	Total	Rs.54,600/-	Rs.79,600/-	Enhanced

13. Heard the rival submissions put forth by both sides' learned counsels. Perused the entire materials available on record.

14. Thus, the compensation awarded by the Tribunal is enhanced which would carry interest at the rate of 7.5% per annum



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from the date of petition till the date of realisation.

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15. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.54,600/-** to **Rs.79,600/-**.

(iii) The 3rd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.79,600/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition** till the date of deposit to the credit of M.C.O.P.No.92 of 2011 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court, Erode), within a period of *eight weeks* from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy



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showing proof of payment of Court fee by the claimant.

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(4/4)

Index : Yes/No
Speaking / Non-speaking order
rna

To

1. The Motor Accident Claims Tribunal,
(II Additional District Court), Erode.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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