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C.M.A.No.346 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 07.02.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**C.M.A.No.346 of 2016**  
**and C.M.P.No.2599 of 2016**

The Branch Manager,  
M/s.United India Insurance Co., Ltd.,  
No.50 A, Pallivasal Street,  
Perambalur. ... 2<sup>nd</sup> Respondent /Appellant

1.Minor.U.Dhanapal Vs.  
... Petitioner  
2.M.Azhagesan ... 1<sup>st</sup> Respondent / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Perambalur in M.C.O.P.No.296 of 2014 dated 15.07.2015.

For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance

**J U D G M E N T**



C.M.A.No.346 of 2016

This Civil Miscellaneous Appeal No.346 of 2016 has been filed challenging the award and decree dated 15.07.2015 made in O.P.No.296 of 2014 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Perambalur.

2. The facts of the case in a nutshell:

On 05.12.2013 at about 3.00 P.M. in order to go to the College, the minor respondent viz., Dhanapal was travelling as pillion rider in Honda Unicon two wheeler bearing Regn. No.TN-48-X-1078, which was driven by his friend one Manikandan. When they were proceeding on Thuraiyur-Musiri main road from north to south and was proceeding at north of Kothampatti bridge, the rider of the two wheeler drove the vehicle in a rash and negligent manner with hectic and uncontrollable speed and dashed on the left side road palakattai and caused the accident. Due to the above accident, the minor first respondent and the rider of the two wheeler were thrown out and fell down and sustained multiple injuries all over the body. The first respondent sustained large lacerated wound over right forehead and right ear, sever injury over periorbital oedema of right eye, fracture over right frontal



bone and right temporal bone and fracture over anterior wall of the right maxilla bone and sustained multiple grievous injuries all over the body.

Hence, the respondents herein filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- and the Tribunal awarded a compensation of Rs.4,52,528/-. Challenging the said award, the appellant/Insurance Company has come forward with the present appeal.

3. Learned counsel for the appellant/Insurance Company submitted that the appeal has been filed challenging the quantum of compensation awarded by the Tribunal and the same is without any basis. The accident took place in the year 2013 and at that time, the age of the injured person was 19 years and he was not minor of 17 years as claimed by the claimants. Even according to Ex.P.1 – F.I.R., the age of the claimant is 19 years and not 17 years and this issue was not adjudicated by the Tribunal.

4. Learned counsel for the appellant/Insurance Company further submitted that the even as per the accident register, the age of the claimant was 19 years at the time of the accident and the F.I.R was on the side of the



claimant himself and they cannot be permitted to turn back. Further, no documents like birth certificate, School Transfer Certificate, College Mark Sheet etc., was not filed to prove that the claimant was a minor and the maintainability of the claim. Even as per the accident register of Kauvery Hospital, it was mentioned that the accident was caused because of “skid and fall from two wheeler” and the Tribunal did not note that the accident has occurred due to the fault of the claimant as he failed to exercise a reasonable care while proceeding. The Tribunal has failed to note the assessment of P.W.4 – Doctor has no basis and the doctor has issued the certificate without conducting necessary examination and without reflecting the current position and the assessment is against medical science and guidelines. The disability suffered by the claimant is only physical disability and the disability assessed by the doctor in respect of the part of the body or limb cannot be set to be disability in respect of whole body. Hence, the award of a sum of Rs.4,00,000/- towards disability, pain and sufferings is unjust, improper and against law.

5. The learned counsel for the appellant/Insurance Company contended



that the award of a sum of Rs.20,000 towards loss of income to the parent is also unsustainable and the total award of a sum of Rs.4,52,528/- is highly ridiculous and the same has to be set aside by allowing this appeal.

6. Heard the learned counsel for the appellant/Insurance company, however, there was no representation for the respondents and perused the materials available on record.

7. It is pertinent to note that the claimant/respondent was not riding the two wheeler and was travelling as a pillion rider and his friend was riding the vehicle. The rider of the two wheeler drove the vehicle in a rash and negligent manner with hectic and uncontrollable speed and dashed at the left side palakattai and due to the above accident, the claimant/respondent and the driver of the two wheeler were thrown out and sustained a multiple injuries all over the body. The claimant/respondent was admitted and treated at Kauvery Hospital, Trichy as inpatient from 05.12.2013 to 21.12.2013. As per the accident register of Kauvery Hospital, the injury was caused because of “skid and fall from the two wheeler”, due to which, he sustained injuries in



the head and fracture over right frontal bone and right temporal bone and also wound over right forehead and right ear and also a fracture over anterior wall of the right maxilla bone and sustained multiple grievous injuries all over the body. The age of the claimant/respondent as per Ex.P.1 – F.I.R is 19 and not 17 as claimed by the claimant/respondent and this issue was not adjudicated by the Tribunal. Hence, it is clear and evident that the claimant/respondent is not a minor of 17 years and he is a major of 19 years.

8. The Tribunal has granted lump sum of Rs.4,00,000/- towards disability, pain and sufferings and inconvenience is unjust and improper and wants interference by this Court. In regard to the percentage of disability, this Court is not inclined to interfere and a sum of Rs.3,000/- towards percentage of disability will be correct and proper. Taking into consideration that the year of accident as 2013, 38% @ Rs.3000/- per % of disability= Rs.1,14,000/-. In regard to the compensation awarded under the heads viz., loss of income to the parents to a sum of Rs.20,000/- and a medical expenses a sum of Rs.32,528/- is just and proper and does not warrant any interference



by this Court. Hence, for the reasons stated supra, the compensation awarded by the Tribunal under the head partial disability, pain and sufferings and inconvenience wants interference by this Court and the same is modified as follows:

| <i><b>Head</b></i>                                               | <i><b>Compensation awarded<br/>by the Tribunal (Rs.)</b></i> | <i><b>Modified/reduced<br/>compensation by<br/>this Court (Rs.)</b></i> |
|------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------|
| partial disability,<br>Pain &<br>Sufferings and<br>inconvenience | 4,00,000/-                                                   | 1,54,000/-<br>(1,14,000 + 30,000<br>+ 10,000)                           |
| Loss of income to<br>the parents                                 | 20,000/-                                                     | 20,000/-                                                                |
| Medical expenses                                                 | 32,528/-                                                     | 32,528/-                                                                |
| Extra nourishment                                                | -                                                            | 10,000/-                                                                |
| Attender charges                                                 | -                                                            | 20,000/-                                                                |
| <b>Total</b>                                                     | <b>4,52,528/-</b>                                            | <b>2,36,528/-</b>                                                       |

9. This Court by its order dated 16.03.2016 permitted the claimant to withdraw Rs.2,26,264/- being the 50% of the compensation awarded by the Tribunal. In view of the above modification made by this Court by reducing the compensation, the claimant/respondent is only entitled to a sum of Rs.2,36,528/- along with 7.5% interest. The appellant/Insurance Company is directed to deposit the aforesaid modified amount, less the amount if any



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deposited already, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/respondent is permitted to withdraw the modified amount by filing appropriate application before the Tribunal.

10. In fine, this Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

**07.02.2023**

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Index : Yes/No

Speaking Order : Yes/No

**J.SATHYA NARAYANA PRASAD,J.**

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To:

1. Motor Accident Claims Tribunal -cum-  
Chief Judicial Magistrate Court,  
Perambalur.

2.The Section Officer,  
VR Section,

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Madras High Court.

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