



THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE DR.JUSTICE D.NAGARJUN

**C.M.A.No.2497 of 2023**

**and**

**C.M.P.No.23227 of 2023**

The Branch Manager,  
The New India Assurance Co. Ltd.,  
Branch Office, No.67, Ethel Harvey Road,  
Sattur Post, Virudhunagar District.

...Appellant

Vs.

1.J.V.Janagiraman

2.E.Rajappa

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 10.11.2022 passed in MCOP.No.1211 of 2020 by the Motor Accident Claims Tribunal, Principal Sub-ordinate Court at Krishnagiri.

For Appellant : Mr.C.Bhuvanasundari

For Respondents :Mr.S.P.Yuvaraj

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



(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal, challenging the award

granted at Rs.36,47,653/- for the injuries suffered by the 1st respondent herein in a motor accident that occurred on 01.02.2020. According to the claimant while he and his wife were walking on the left side of the Rayakottai to Hosur road in Rayakottai town at about 11 a.m., the Tractor-Trailer bearing Registration No.TN-70-E-9563 belonging to the 1st respondent driven by its driver in a rash and negligent manner came from behind and hit the petitioner. Due to the impact, the petitioner fell down and the wheel of the trailer ran over his right leg and as a result of the crush injury his right leg was amputated below the knee. Claiming that he had suffered loss of income and he should also be compensated for the pain and suffering, the claimant sought for Rs.75,00,000/- as compensation.

2.The claim was resisted by the Insurance Company contending that the accident occurred due to the negligent act of the petitioner when he attempted to cross the road. It was also claimed that the petitioner was a person of poor vision and hearing capacity and the compensation claimed was termed as excessive.



3.At trial, before the Tribunal, the petitioner was examined as P.W.1. Exs.P1 to P11 were marked. There was no evidence let in on the side of the respondents. Disability certificate given by the Medical Board, certifying disability at 60% was marked as Ex.C1. The Tribunal, based on the evidence let in and considering the fact that there was no contra evidence, concluded that the negligence was on the part of the driver of the Tractor and he was responsible for the accident. The Tribunal, took the disability at 30%, even though it was certified at 60% by the Medical Board and on the basis of the income tax returns filed, took the notional monthly income at Rs.1,32,092/-. By applying multiplier of 5, calculated the loss of dependency at Rs.23,77,656/-. Medical expenses were fixed at Rs.5,98,997/- based on the medical bills. The Tribunal also awarded future medical expenses at Rs.50,000/-, Transportation at Rs.10,000/-, Nutrition charges at Rs.5,000/-, Attender charges at Rs.5,000/-, pain and suffering at Rs.3,00,000/-, loss of amenities and enjoyment of life at Rs.3,00,000/- and damages to clothing and articles at Rs.1,000/-. Thus, the total compensation was arrived at Rs.36,47,653/-. Aggrieved, the Insurance Company is on appeal.

4.We have heard Mrs.C.Bhuvanasundari, learned counsel



appearing for the appellant / Insurance Company and Mr.S.P.Yuvaraj,  
learned counsel appearing for the respondents.

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5.Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant / Insurance Company would vehemently contend that the Tribunal was erred in taking the entire income of the Hindu Undivided Family as the income of the injured and calculating the loss of dependency. She would also submit that no reduction in income has been demonstrated by the claimants. She would further contend that the award on the heads of pain and suffering and loss of amenities are on the higher side. We have considered the submissions.

6.The Hindu Undivided Family is an Unit where, the Karta earns the livelihood. Therefore, the same cannot be treated as a partnership and apportionment of the shares cannot happen. The entire income is at the hands of the Karta for disbursal at his pleasure. Hence, we do not accept the contention that the principle of sharing of the income as done in partnership could applied to a Hindu Undivided Family.

7.As regards the contention that there was no reduction in income,



we are dealing with a case of injury where the impact of the injury is to be assessed. The head of the family, the Karta has suffered amputation, definitely the business would suffer. There cannot be any direct evidence for such reduction in income. We are therefore, unable to accept the contention of the learned counsel on this ground also.

8.The learned counsel for the appellant / Insurance Company would submit that the awards on the heads of pain and suffering and loss of amenities is on the higher side. We find that a sum of Rs.3,00,000/- each has been granted on the said heads. Even though there is scope for reduction in the same, we do not think we should interfere with the award, since we find the award on the whole is reasonable. We must also point out that the Medical Board has assessed the disability at 60% whereas the Tribunal has taken the same only at 30% and therefore, even though the contention of the learned counsel for the Insurance Company that the awards on the heads of pain and suffering and loss of amenities is slightly on the higher side, the same is compensated with the reduction of almost half of the disability by the Tribunal.



9.Lastly, the learned counsel for the Insurance Company would contend that the interest has been granted at 9%. Mr.S.P.Yuvaraj, learned counsel for the claimants would agree that normally Tribunals grant 7.5% . Therefore, the interest alone is reduced to 7.5%.

10.In view of the same, this Civil Miscellaneous Appeal is **partly allowed** by reducing the interest alone to 7.5% from 9%. The awards in all other aspects will stand confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (D.N.R.,J.)  
12.10.2023

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Internet:Yes

Index:No

Speaking

Nuetral Citation :No



To:-

The Motor Accident Claims Tribunal,  
Principal Sub-ordinate Court,  
Krishnagiri.

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**R.SUBRAMANIAN, J.**  
**and**



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**D.NAGARJUN, J.**

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