



WEB COPY



C.M.A.No.1526 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.10.2023

CORAM:

MR. JUSTICE N.SESHASAYEE

C.M.A.No.1526 of 2022
and C.M.P.No.11351of 2022

The Branch Manager
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street, Tiruvannamalai
Appellant

...

Vs.

1.Minor Yashwanth
Minor Petitioner rep. by his father
next friend and guardian namely
Mahadevan

2.Seenuvasan
3.Vengatesan

4.The Branch Manager
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street, Tiruvannamalai

... Respondents

PRAYER: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.464 of 2019 on 17.03.2022 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) MCOP, Tiruvannamalai.

For petitioner : Mr.J.Chandran

For respondents: R2- Sd - N.A
R4 - Tapal not returned
R3 - unclaimed



C.M.A.No.1526 of 2022

JUDGMENT

The appellant herein is an Insurance Company, which challenges the quantum of compensation awarded by the Tribunal in M.C.O.P.No.464 of 2019 vide its award dated 17.03.2022, in a matter involving an injury to M.Yashwanth who was aged barely 11 years at the time when the accident took place. The accident *per se* is not disputed.

2.The accident involved in collision between two auto rickshaws. While the claimant was returning from his school in an autorickshaw bearing No.TN 25 AB 5726 on 19.06.2016 around 5.00 p.m., the 1st respondent who was driving his auto in TN 25 BC 9636 colluded with the first mentioned autorickshaw. In this accident the claimant suffered fracture to his femur. He was referred to the medical Board which determined his disability at 15%. Taking into consideration the circumstances, the Tribunal awarded Rs.3,00,000/- towards permanent disability. For medical expenses the Tribunal has relied on Ex.P9, the medical bills and awarded the actuals at Rs.1,06,084/-. For pain and suffering the Tribunal has awarded a sum of Rs.35,000/-. The details of the award is as below:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Disability (15%)	Rs.3,00,000/-
2	Pain and sufferings	Rs. 35,000/-



C.M.A.No.1526 of 2022

<i>Sl.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
3	Extra Nourishment	Rs. 15,000/-
4	Medical Expenses	Rs.1,06,084/-
5	Attender Charges	Rs. 10,000/-
6	Transportation Expenses	Rs. 10,000/-
7	Loss of Amenities	Rs. 25,000/-
	Total	Rs.5,01,084/-

This is now under challenge.

3. Learned counsel for the appellant submitted that for 15% disability the Tribunal went wrong in awarding Rs.3,00,000/- as compensation and this is his fundamental issue. Here the Tribunal has relied on judgment of the Hon'ble Supreme Court in *Master Mallikarjun Vs.Divisional Manager, National Insurance Co. Ltd., & another reported in 2013(2) TN MAC 338(SC)*, wherein it has held that for any disability above 10% and upto 30% to the whole body Rs.3,00,000/- to be awarded, but the learned counsel submitted that the injury is not to the whole body but only to femur.

4.This Court opines that the injury suffered by the young boy will have a long lasting effect even vis-a-vis his career option and in other physical activities. As very rightly indicated in the aforesaid judgment, in all such cases it will be

N.SESHASAYEE

kas



C.M.A.No.1526 of 2022

WEB COPY

difficult to evaluate the consequence the disability may produce. In these circumstances, this Court does not find any merit in the appeal to interfere with the award passed by the Tribunal.

5.This Civil Miscellaneous Appeal stands dismissed accordingly. The appellant is now directed to deposit the remaining 50% of the award amount directed by the Tribunal within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

10.10.2023

kas

Index : Yes / No
Neutral Citation

C.M.A.No.1526 of 2022
and C.M.P.No.11351 of 2022