



C.M.A.No.4581 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.4581 of 2019

and

C.M.P.No.26017 of 2019

The Manager-Claims,
Bharti Axa General Insurance Company Ltd.,
Branch Office at
No.965-Avinashi Road, Coimbatore – 18.

C/o. The Branch Manager,
Bharti Axa General Insurance Company Ltd.,
Divya Trade Centre,
1st Floor, No.11,
Brindhavan Road,
Fair Lands, Salem.

... Appellant

Vs.

1.Minor.G.Gokul
Represented by next friend,
Guardian and Father D.Ganesh

2.M.Rajesh

3.V.Priya Gayathiri

[2nd & 3rd respondent remained exparte in lower court:
hence notice may be dispensed with] ... Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2018 made in M.C.O.P.No.246 of 2017 on the file of Motor Accident Claims Tribunal cum Special Sub Ordinate Judge at Erode.

For Appellant : M/s.K.Poomalai

For Respondents : M/s.R.Nalliyappan [R1]
Exparte vide order dated
12.06.2023 (JR(AS)) [R2 &
R3]

JUDGEMENT

Challenging the award passed by the Motor Accident Claims Tribunal cum Special Sub Ordinate Judge at Erode, in M.C.O.P.No.246 of 2017 dated 13.07.2018, the insurance company has filed the present appeal.

2. As per the claim petition, on 13.12.2015 at about 3.00 p.m., when the claimant was riding his bicycle on the Kovai K.K. Pudur, Church Road, the first respondent driven the vehicle bearing Reg.No.TN 38 PZ 8428, which was owned by the second respondent and insured with the third respondent, in a rash and negligent manner, coming on the wrong side, dashed against the claimant, as a result of which, the



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claimant fell down and sustained multiple fractures and grievous injuries.

Hence, the claimant was taken to the hospital for treatment of the fracture and other grievous injuries and therefore, the claimant has filed a claim petition claiming a sum of Rs.25,00,000/- as compensation before the Tribunal as against the third respondent/insurer of the offending vehicle.

3. Before the Tribunal, the claimant had examined three witnesses viz., P.W.1 to P.W.3 and marked 30 documents viz., Ex.P.1 to Ex.P.30. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal had allowed the petition in part and awarded a sum of Rs.13,37,100/- as compensation under various heads. Aggrieved by the same, the insurer of the offending vehicle is before this Court by way of the present appeal.

4. The learned counsel appearing for the appellant/insurer submitted that, the Tribunal had awarded a sum of Rs.4,00,000/- towards pain and sufferings, disability and loss of earning power, however, no breakup has been given, which is totally erroneous. Further, he submitted that future medical expenses in a sum of Rs.8,00,000/- which has been



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awarded over and above the medical bills submitted by the claimant for the treatment taken by him is not based on any proper medical evidence. It is the further submission of the learned counsel that the disability assessed by the medical expert has been fixed by the Tribunal at 39%, which is on the higher side as P.W.2, doctor who had treated the claimant at the hospital had issued Ex.P.9, have not given any evidence that there is a loss of hearing for the claimant, which is the further evidenced from Ex.P.27 to Ex.P.30. Over all it is submitted by the learned counsel that, the compensation awarded is on the higher side and the same needs interference of this Court.

5. Per contra, the learned counsel appearing on behalf of the first respondent/claimant submitted that, the claimant was aged about 10 years and was studying V standard and the accident had resulted in multiple fractures and grievous injuries and had restricted the movement of the claimant and the claimant is also suffering from frequent head ache, giddiness, loss of memory and epilepsy. It is the further submission of the learned counsel that, the injuries suffered by the claimant has resulted in the claimant not able to attend his regular classes as he is not



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able to sit continuously in the classroom and he is not able to participate in any games and sports. Therefore, the normal life could not be led by the claimant. Considering all the above facts, the Tribunal has computed the compensation, which is just and reasonable and no interference is warranted.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. There is no quarrel that the claimant had suffered the injuries as a result of the accident, in which the third respondent's vehicle was involved, which has been insured with the appellant/insurance company. The Tribunal, considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the first respondent that the accident had happened and therefore, it is the duty of the insurance company as insurer of the offending vehicle to compensate the claimant. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.



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8. The only issue that arises for consideration in the present appeal is with regard to the fixation of percentage of disability suffered by the claimant. The injuries suffered by the claimant is not dispute, but the dispute is only with regard to the computation of the disability, as according to the appellant, P.W.2 doctor who had treated the claimant if spoken that the claimant has not suffered any hearing loss. Ex.P.9 is the discharge summary relating to the treatment given to the claimant. The doctor who had examined the claimant had assessed the disability in various factors based on the injuries suffered in loss of hearing and computed all together has arrived at the partial permanent disability at 39%. Though it is claimed by the third respondent that the disability computed is on the higher side, however, no evidence contrary to the one adduced by the claimant to substantiate the disability at 39% has been placed before the Tribunal. The Tribunal, after properly considering all the materials including the medical reports, has accepted the disability arrived at by the doctor at 39%. Therefore, fixation of percentage of disability is also confirmed.



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9. The only issue now requires to be decided is the compensation which has been awarded by the Tribunal under the various heads. The Tribunal has awarded the compensation under the heads transport expenses, extra nourishment and damages to clothes and articles, which amounts are very meagre and the same does not require interference. The two heads under which the compensation has been awarded at Rs.9,30,600/- and Rs.4,00,000/- under the head medical expenses and the composite head pain and sufferings, disability and loss of earning power. The medical expenses, which has been awarded by the Tribunal at Rs.9,30,600/- are based on the medical bills, which has been filed by the claimant and also towards the future medical expenses, that would be required for treating the claimant. The future medical expenses are also based on the calculation and treatment that are necessary for the claimant, which has been approved by the doctors and therefore, Rs.9,30,000/- does not require interference. However, a sum of Rs.4,00,000/- is awarded under the composite head of pain and sufferings, disability and loss of earning power. The Tribunal is required to compute compensation under each and every individual head upon analyzing all the documents. It is not open to the Tribunal to give



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composite sum by clubbing three different claims. Individual heads have to be properly analyzed with regard to injuries suffered by the claimant and compensation has to be awarded. Therefore, the compensation awarded under the composite head requires to be modified.

10. This Court has already held that the disability fixed at 39% is just and reasonable. Considering the fact that the accident had happened in the year 2015, adopting percentage method, this Court is of the considered view that a sum of Rs.5,000/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.1,95,000/- is awarded under the head disability. Under the head pain and sufferings, considering the gravity of the injuries and the nature of the injuries suffered by the claimant from the perennial nature of the said injuries, this Court feels that a sum of Rs.50,000/- under the said head would be just and reasonable compensation. The claimant being aged only 10 years on the date of the accident, there arises no question of loss of earning power. Therefore, no amount is awarded the said head. In all, the award of the Tribunal is modified as follows :-



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<i>S.No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Transport expenses	3,000/-	3,000/-
2	Extra nourishment	3,000/-	3,000/-
3	Damages for clothes and articles	500/-	500/-
4	Medical Expenses	9,30,600/-	9,30,600/-
5	Pain and sufferings	4,00,000/-	50,000/-
6	Disability		1,95,000/-
7	Loss of earning power		-
	Total	13,37,100/-	11,82,100/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned award of the Tribunal is modified, reducing the compensation from **Rs.13,37,100/-** to **Rs.11,82,100/-**. The third respondent/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.246 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. It is made clear that the first respondent/claimant is not entitled to any interest for future medical expenses of Rs.8,00,000/-. On such deposit being made, the Tribunal is directed to deposit the same in



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an interest yielding fixed deposit with any one of the Nationalised Banks, until he attains majority and interest derived from out of the said deposit shall be paid to the father/D.Ganesh of the claimant every quarter to be utilised for the welfare of the said minor claimant. After attaining majority, it is open to the claimant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

sp

To

1.The Motor Accident Claims Tribunal cum Special Sub Ordinate Judge, Erode.

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



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M.DHANDAPANI, J.

sp

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