IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3268 of 2019 and
C.M.P.No.18803 of 2019

Shriram General Insurance Co. Ltd.,
Represented by its Manager,
E-8, EPIP, Sitapura Industrial Area,
Jaipur, Rajasthan State – 302 022. ... Appellant

Vs.

1. Mottupalli Priyanka
A person Mentally retarded,
D/o.Mottupalli Mottupalli Ashok Kumar @ Ashok Naidu,
Rep. by Next friend father
Mottupalli Ashok Kumar @ Ashok Naidu

2. B.Anand Kumar ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 16th day of April 2019 made in M.C.O.P.No.913 of 2018, on the file of Motor Accident Claims Tribunal (Special Sub Court), Krishnagiri.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Not ready in notice [R2]
Mr.M.Sivakumar [R1]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal (Special Sub Court), Krishnagiri in M.C.O.P.No.913 of 2018 dated 16.04.2019, the insurance company has filed the present appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) On 06.11.2013 at about 6.30 a.m. when the first respondent was walking on the extreme left side of the road, an auto bearing Regn.No.030TA 0135 belonging to the second respondent which was insured with the appellant / insurance company driven by its driver in a rash and negligent manner dashed against the first respondent / claimant, due to the said impact the claimant sustained grievous injuries and was admitted in the Hospital from 06.11.2013 to 07.12.2013. Claiming compensation in a sum of Rs.25,00,000/- the claimant has filed the claim petition.

3. Before the Tribunal, the claimant examined P.W.1 and marked

Exs.P.1 to Ex.P.16. The respondents examined R.W.1 and marked Ex.R1. Aggrieved over the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant submit that though the Medical Board assessed the disability of the claimant at 60% partial permanent disability as per Ex.C1, however, the Tribunal has erroneously fixed the disability at 75% by adopting multiplier method as if the claimant suffered functional disability which is per se unsustainable. Further the other heads awarded by the Tribunal are also highly excessive. Accordingly, he prays for allowing this appeal.

5. Per contra, the learned counsel appearing for the first respondent / claimant submits that though the Medical Board assessed the disability of the claimant at 60%, however, the Tribunal by taking into consideration the nature of the injuries suffered and the age of the injured, has fixed 75% disability which cannot be interfered with. Further, the other heads awarded by the Tribunal are just and reasonable and the same does not warrant interference.

Accordingly, he prayed to dismiss the appeal.

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

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / insurance company is with regard to the percentage of disability fixed by the Tribunal by adopting multiplier method though the disability suffered by the first respondent is not functional disability. On a perusal of the entire records reveals that the claimant suffered head injury, on account of which, she was not able to continue her avocation as before the said accident. As per Ex.P9, the claims Tribunal arrived at a conclusion that the claimant suffered functional disability, for which the Tribunal awarded future prospects which cannot be interfered with. Insofar as the disability assessed by Tribunal is concerned, though the Medical Board assessed 60% partial permanent

disability, the Tribunal has fixed the disability of the claimant at 75% which is wholly unsustainable. Hence, this Court is inclined to modify the said aspect alone. Further the other heads awarded by the Tribunal need not be interfered with. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** fixing a notional income of Rs.8,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.11,200/-. The injured claimant being aged about 17 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of earning power of 60% disability is arrived at Rs.11,200/- * 12 * 60% * 18 = Rs.14,51,520/-.

8. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Earning Power	**18,15,000/-**	**14,51,520/- (reduced)**
Medical Expenses	3,51,000/-	3,51,000/-
Transport, Nutrition and attender charges	20,000/-	20,000/-
Pain and Sufferings	2,00,000/-	2,00,000/-
Loss of Amenities and enjoyment of life	2,00,000/-	2,00,000/-
Damages to clothing and articles	1,000/-	1,000/-
Loss of Marital prospects	2,00,000/-	2,00,000/-
Total	**27,87,000/-**	**24,23,520/-**

9. When the claim petition was filed in the year 2018, the first respondent was aged about 17 years. Now, the first respondent should be aged about 23 years and is therefore, major. Though no application has been taken out to declare her as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the first respondent as major and discharges her father Mottupalli Ashok Kumar @ Ashok Naidu from the guardianship. The Registry shall carry out the necessary amendments.

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.27,87,000/-** to **Rs.24,23,520/-**. The appellant-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.913 of 2018 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 (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent / claimant through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2023

Index : Yes / No
Speaking Order / Non-speaking order : Yes / No
Neutral Citation Case : Yes / No
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M.DHANDAPANI,J.,

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To

1. Motor Accident Claims Tribunal (Special Sub Court), Krishnagiri.

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

C.M.A.No.3268 of 2019

23.11.2023