



WEB COPY



C.M.A.No.1895 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1895 of 2014

and

MP.No.1 of 2014

The Branch Manager,
National Insurance Co.Ltd.,
Branch Office, 1631/1-B, First Floor,
Salem Bhavani Main Road,
Sankagiri-637301

... Appellant

Vs.

1.Minor Nitheshkumar
Rep by his father G.V.Manjunath
2.S.Annadurai

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2013 made in MCOP.No.1614 of 2013 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge, Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Mukund R. Pandiya for R1



C.M.A.No.1895 of 2014

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 28.06.2013 passed in MCOP.No.1614 of 2013, on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Krishnagiri.

2. The Insurance Company is the appellant, who filed this appeal questioning the quantum of compensation.

3. The accident occurred on 28.09.2008 at 2.30 hours when the minor first respondent was travelling as a pillion rider in the Pulsar motor cycle bearing Regn.No.KA.53/E/9176 and one K.Nagaraj was riding the said vehicle and proceeding on the left side of the road, at the U turn situated near Pathakota X road, Kammandhoddi in Krishnagiri to Hosur NH road, a lorry bearing Regn.No.TN-54/7175 belonging to the second respondent and insured with the appellant/Insurance Company came in Hosur to Krishnagiri side and turned suddenly to the right side and dashed forcibly on the said motor cycle and caused the accident. Due to the said

2/10



impact, rider and the minor first respondent sustained injuries. Thereafter, he took treatment at Vijaya Nursing Home and also in NIMHANS Hospital, Bangalore and also then further treatment in Abhaya Hospital, Bangalore.. Thereafter, claiming a sum of Rs.10,00,000/-, the claimant has filed the claim petition before the Tribunal. The Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance Company has defended their case. The Tribunal has awarded a total compensation of Rs.4,21,400/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. He further submitted that the Tribunal has failed to note that the accident has occurred due to the fault of the rider of the motor cycle. It has failed to note that the assessment of PW2 has issued certificate without conducting necessary examination and without reflecting the correct position and has no basis. It failed to note that the alleged injuries cannot attract any disability. It has erred in granting huge sum of



Rs.2,52,000/- towards disability without any basis by applying multiplier method of calculation. It has erred in equated the alleged physical disability with the alleged future loss of earning capacity. It failed to note that future medical expenses shall not carry any interest. The award of Rs.50,000/- towards loss of expectation of proper marital life is also unsustainable. It failed to note that the disability assessed by Doctor in respect of part of body or limb cannot be set to be disability in respect of whole body. In other words, the Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. For the aforesaid reasons, the award is liable to set aside the Judgment and Decree of the Tribunal by allowing this appeal.

5. The learned counsel for the first respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

6. Heard the learned counsel for the appellant and and the learned



C.M.A.No.1895 of 2014

counsel for the first respondent and perused the materials available on
record.

7. Insofar as the assessment of disability by the Tribunal is concerned, the PW2/Doctor assessed the disability at 35% for head injury and caused left frontal temporo parietal SDH; right temporal bone fracture; right upper limb monoparesis, headache and he is unable to do his work as before. Hence, the Tribunal has fixed the disability at 35% considering the nature of injuries and the evidences in Ex.P7/X-ray and Ex.P8/Disability Certificate. Hence, the disability percentage fixed by the Tribunal is a correct assessment.

8. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that the claimant is not permanently disabled. Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.2,000/- for 1% disability shall be

5/10



C.M.A.No.1895 of 2014

granted considering the year of the accident is 2008. Accordingly, by adopting percentage method, the compensation awarded under the head of future loss of earning capacity is reduced to Rs.70,000/- (2000 x 35%) by this Court instead of Rs.2,52,000/-. However, considering the gravity of injuries and period of treatment of the claimant, a sum of Rs.40,000/- under the head of pain and suffering and mental agony is enhanced by this court instead of Rs.30,000/- as assessed by the Tribunal. It would also be appropriate to award a sum of Rs.25,000/- towards Transport and Nutrition charges and Rs.12,000/- towards Attender charges. In the considered opinion of this court, a sum of Rs.50,000/- awarded under the head of loss of expectation of proper marital life is unnecessary and hence the same is deleted. Considering the date of accident, this court is inclined to enhance the rate of interest from 6% to 7.5% on the award amount.

9. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and they do not call for any interference by this Court.



C.M.A.No.1895 of 2014

WEB COPY 10. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Future Loss of earning capacity	2,52,000/- (4000 x 12 x15 x35%)	Rs.70,000/- (Disability at 35% x 2000)
Pain and suffering and mental agony	30,000/-	40,000/-
Transport and nutrition charges	20,000/-	25,000/-
Attender charges	10,000/-	12,000/-
Medical expenses	39,400/-	39,400/-
Future medical expenses	20,000/-	20,000/-
Loss of expectation of proper marital life	50,000/-	NIL
Total	4,21,400/-	2,06,400/-



C.M.A.No.1895 of 2014

WEB COPY 11. In the result,

(i) This appeal is partly allowed. The Appellant / Insurance Company and the 2nd respondent/owner of the vehicle are jointly and severally liable to pay the modified award amount. Thus, they are directed to deposit the modified award amount i.e, Rs.2,06,400/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1614 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. Consequently, the connected miscellaneous petition is closed. No costs.

28.03.2023

Index : Yes/No

Internet: Yes/No

gv



C.M.A.No.1895 of 2014

WEB COPY

To

- 1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Krishnagiri.
- 2.The Section Officer,
V.R Section,
High Court, Madras.



WEB COPY



C.M.A.No.1895 of 2014

A.A.NAKKIRAN, J.
gv

C.M.A.No.1895 of 2014
and
MP.No.1 of 2014

28.03.2023