



WEB COPY



C.M.A.No.4423 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4423 of 2019

and

C.M.P.No.25113 of 2019

M/s.National Insurance Company Ltd.,
Rep by its Manager,
'Anuradha Complex' , III Floor,
Opp.Raj Theatre,
Bangalore Road,
Krishnagiri.

.. Appellant

Vs.

1.Minor Chennappan
2.K.Rajesh
3.Anbu

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2018 made in MCOP.No.1 of 2018 on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance for R1 & R2



C.M.A.No.4423 of 2019

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 25.07.2018 passed in MCOP.No.1 of 2018, on the file of the Motor Accident Claims Tribunal//Special Sub-Court, Krishnagiri.

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

3. On 16.01.2015 at 07.30 hours, the minor claimant proceeded in the auto bearing Regn.TN-28-J-3865 as passenger. The said auto belonged to the 2nd respondent herein as per R.C book and 3rd respondent is the owner as per policy and insured with the appellant. While the claimant was proceeding in the curve road at Garikal natham village, the driver of the auto drove the same in a rash and negligent manner, he lost his control and the auto capsized on road side. Due to the said impact, the minor claimant sustained multiple grievous injuries. Immediately, he was taken to the Government Hospital, Krishnagiri and admitted there as in-patient. It

2/10



WEB COPY

happened only due to the rash and negligent driving of driver of the said auto. The Gurubarapalli police registered the case against the driver of the auto in Cr.No.13 of 2015 under Sections 279 and 337 of IPC. The minor claimant aged about 15 years old, was unable to sit, stand or walk and he finds it difficult to stand for a long time and also unable to concentrate on his studies. Hence he claims Rs.15,00,000/- before the Tribunal. Thereafter, the claim petition was filed and 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.6,86,000/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal under various heads is exorbitant and based on that, the appellant/Insurance Company has chosen to file the present appeal. He further submitted that there was no continuous treatment record, subsequent to his discharge from SPARSH Hospital on 30.07.2015 showing any



complications, consequent to the alleged treatment to fix the fracture. It failed to convert the 40% disablement to whole body, for the purpose of determining compensation, considering the fact that the alleged fracture injury was only on the left femur alone. It failed to appreciate the injuries sustained and whether there would be any functional impairment for the first respondent warranting compensation of Rs.4,00,000/- for the alleged 40% partial and permanent disablement. Without understanding the true purport of the decision of the Hon'ble Supreme Court, rendered in *Master.Mallikarjun Vs.National Insurance Co., Ltd., reported in 2013 (2) TNMAC page 338 (SC)* and in a mechanical fashion had granted Rs.4,00,000/- for 40% disablement. For the aforesaid reasons, the award has to be modified and appeal is liable to be allowed.

5. The learned counsel for the 1st respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal has awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.



6. This Court has considered the said submissions made by the learned counsel for the appellant and perused the materials available on record. The third respondent has remained exparte before the Tribunal.

7. The claimant is a student studying 9th Standard aged 15 years at the time of accident. A perusal of Ex.P3, Ex.P5 and Ex.P6 marked by PW1, the discharge summaries issued by Padma Poly Clinic, Krishnagiri and Sparsh Hospital, Bangalore, would reveal that the minor claimant was admitted as in-patient from 16.01.2015 to 20.01.2015, 18.06.2015 and 28.07.2015 to 30.07.2015. Considering the nature of the injuries as well as the disability sustained as well as that the 2nd respondent as a tortfeasor cum owner, is liable to compensation. Thus the Tribunal has awarded a sum of Rs.4,00,000/- towards 40% permanent disability. However, the Tribunal has also awarded a compensation of Rs.40,000/- under the head of transport expenses. In the considered view of this Court, unnecessarily the Tribunal has awarded excess compensation for simple injuries and hence, the same has to be modified to Rs.20,000/-.



WEB COPY

8. P.W.1 deposition and Ex.P2 Accident register show that the claimant had sustained injuries in the accident and immediately he was taken to the Government Hospital, Krishnagiri and he sustained swelling over the left thigh and fracture of left femur and multiple injuries all over the body. Also he had taken treatment in Padma Poly Clinic, Krishnagiri and Sparsh Hospital, Bangalore, which would reveal that the claimant was admitted as in-patient from 16.01.2015 to 20.01.2015, 18.06.2015 and 28.07.2015 to 30.07.2015 proving that the claimant suffered grievous injuries due to the accident. PW2 has assessed the disability of the appellant at 40% for the injuries sustained by him. Upon perusing Ex.P4/medical records, the Medial Board has assessed the disability of the appellant at 40% and issued Ex.C1/disability certificate. In such circumstances, the Tribunal has fixed 40% disability for the injuries sustained by the appellant. Considering the age of the appellant, the Tribunal has awarded Rs.10000/- per percentage and thus arrived at Rs.4,00,000/- (10000 x 40%) under the head of disability which is incorrect in the considered view of this court and hence the same needs re-visit. Considering the age of the claimant and



C.M.A.No.4423 of 2019

gravity of injuries sustained, this court is inclined to re-fix Rs.5000/- per percentage and thus arrived at Rs.2,00,000/-(5000 x 40%). From the records, it is seen that he has taken continuous treatment in private hospitals even after discharge from the Government Hospital. This Court is of the considered view that due to the nature of grievous injuries sustained by the appellant and the period of treatment as in-patient and out-patient, he has incurred transport expenses and he might have taken nutritious food and hence this court is inclined to grant a sum of Rs.20,000/- towards Transport to Hospital instead of Rs.40,000/- awarded by the Tribunal which seems to be on higher side. This court also inclined to fix Rs.20,000/- towards extra nourishment for which no amount has been granted by the Tribunal. Similarly, it would be appropriate to award a sum of Rs.75,000/- towards pain and sufferings. On perusal of records, it is seen that the Tribunal has awarded 9% interest on the compensation amount from the date of petition to the date of deposit which is incorrect. Hence, this court re-fix the rate of interest at 7.5% on the compensation amount.



9. Insofar as the compensation under the head of medical expenses is concerned, the assessment of the compensation under the said head by the Tribunal is correct since it is based on medical bills and hence, it does not call for any interference by this Court.

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>
Disability	4,00,000/-	Rs.2,00,000/-
Pain and Suffering	NIL	75,000/-
Transport charges	40,000/-	20,000/-
Extra Nourishment	NIL	20,000/-
Medical expenses	2,46,000/-	2,46,000/-
Total	6,86,000/-	5,61,000/-

11. In the result,

(i) This appeal is partly allowed and the Appellant / Insurance



C.M.A.No.4423 of 2019

Company is directed to deposit the modified award amount i.e, Rs.5,61,000/- 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.1 of 2018 within a period of four 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. No costs. Consequently, connected Miscellaneous Petition is closed.

20.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
gv



WEB COPY



C.M.A.No.4423 of 2019

A.A.NAKKIRAN, J.
gv

To

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

C.M.A.No.4423 of 2019
and
C.M.P. No.25113 of 2019

20.04.2023

10/10