



C.M.A.No.409 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.409 of 2020

and

C.M.P.No.2462 of 2020

United India Insurance Co. Ltd.,
Silingi Building, 4th Floor,
No.132, Greaves Road,
Chennai – 600 006.

.. Appellant

Vs.

1.C.Kamesh (Minor),
rep. by his Mother & NF Ilakkiya.

2.E.Karthick

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.03.2015 made in M.C.O.P.No.5970 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.A.A.Venkatesan

For R2 : No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 06.03.2015 made in M.C.O.P.No.5970 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant herein is the 2nd respondent in M.C.O.P.No.5970 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. The 1st respondent herein filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.01.2012.

3.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider-cum-owner of the motorcycle, the 2nd respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.4,03,000/- as compensation to the 1st respondent.



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4.Challenging the quantum of compensation in the award dated 06.03.2015 made in M.C.O.P.No.5970 of 2012, the appellant-Insurance Company has come out with this appeal.

5.The learned counsel for the appellant/Insurance Company would contend that the assessment of disability by P.W.2/Doctor is on the higher side, as the disability certificate issued by him is without any basis and the Tribunal has awarded excessive amount of Rs.75,000/- towards disability. After initial course of treatment, the 1st respondent / claimant has not taken any subsequent or continuous treatment. The amounts awarded by the Tribunal for pain and sufferings, extra nourishment, attendant charges and transportation are highly excessive. He would further contend that the Tribunal, in the absence of any proof for medical expenses incurred by the 1st respondent, has awarded a sum of Rs.50,000/- towards medical expenses and further awarded a sum of Rs.25,000/- towards future medical expenses, which is without any basis. The Doctor who treated the 1st respondent was also not examined. The total compensation awarded by the Tribunal is excessive and prayed for reducing the quantum of compensation.



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6. Rather the learned counsel for 1st respondent would contend that P.W.2/Doctor after examining the 1st respondent has assessed the percentage of disability at 30% and issued Ex.P8/disability certificate to that effect. But, the Tribunal without giving any valid reason, has reduced the percentage of disability from 30% to 25% and granted compensation only for 25% of disability at the rate of Rs.3,000/- per percentage of disability. The 1st respondent has taken treatment as inpatient in the Government Royapettah Hospital, Chennai from 24.01.2012 to 25.01.2012, then he was admitted at Puttur Bone Setting Hospital on 26.01.2012 and taken outpatient treatment for six months and produced Ex.P4 / OP chits to that effect and the compensation towards transportation is reasonable. The 1st respondent was aged 5 years at the time of accident and hence, the amounts awarded under pain and sufferings and extra nourishment are just and reasonable. The 1st respondent spent considerable amounts towards medicines and hence, the compensation awarded towards medical expenses and future medical expenses are reasonable. The total compensation awarded by the Tribunal is not excessive and to strengthen his aforesaid arguments, following judgments are referred to and prayed for dismissal of the appeal.



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(i) ***National Insurance Co. Ltd., Thanjavur Vs. Singaram @ Singaru and another*** reported in ***[2014 (1) TNMAC 822]***, wherein it has been held that though a sum of Rs.50,000/- awarded for medical expenses, is not supported by any document, yet it could be seen from the averments that the respondent has been initially treated at Jayakondam Government Hospital for two days and thereafter, in Thanjavur Medical College Hospital for 7 days. Both are Government Hospitals. Therefore, the possibility of incurring medical expenses for the kind of injuries sustained by the respondent cannot be ruled out.

(ii) ***Nesamony Transport Corporation Limited Vs. Chenthilathiapan & another*** reported in ***[I (2000) ACC 332]***, wherein it has been held that according to the evidence of P.Ws.3 & 4, the respondent was hospitalised from 14.01.1988 to 01.02.1988. In the meantime, an operation was conducted. Though for the entire amount of Rs.25,000/-, there are no medical bills, the non-production of medical bills cannot be taken as a ground to reject the evidence of P.W.1, who has stated that he was incurring expenditure by paying the rent to the hospital room, etc,. Admittedly, as stated by P.Ws.3 and 4, operation was conducted upon the claimant and plate was inserted in his



left leg. In the light of the above facts and circumstances, I am unable to say that the amount of compensation of Rs.25,000/- under the head medical expenses can be said to be excessive.

7.Though notice has been served on 2nd respondent and his name is printed in the cause list, there is no representation for him.

8.Heard Mr.D.Bhaskaran, learned counsel for appellant and Mr.A.A.Venkatesan, learned counsel for 1st respondent and perused the materials on record.

9.From the materials on record, it is seen that the 1st respondent got injured in the accident that occurred on 24.01.2012 and sustained fracture of right leg, injuries on both legs and multiple injuries all over the body. The 1st respondent proved the nature of injuries sustained by him by producing Ex.P8 / disability certificate issued by P.W.2/Doctor, who examined the 1st respondent and assessed that the 1st respondent suffered 30% disability. The Tribunal reduced the percentage of disability and fixed the same at 25% and awarded a sum of Rs.75,000/- for 25% disability at the rate of Rs.3,000/- per



percentage of disability. Considering the nature of injuries sustained by the 1st respondent, the compensation awarded by the Tribunal towards disability is just and reasonable and does not need any interference.

10. Due to the injuries sustained in the accident, the 1st respondent would have suffered pain, for which the Tribunal has awarded a sum of Rs.1,00,000/- towards pain and sufferings, which seems to be little on the higher side and the same is reduced to Rs.75,000/-.

11. Further, the amounts awarded by the Tribunal towards extra nourishment at Rs.75,000/- and transportation at Rs.50,000/- are also appears to be on the higher side and hence, the same are reduced to Rs.50,000/- and Rs.30,000/- respectively.

12. The 1st respondent has taken inpatient treatment at Government Royapettah Hospital, Chennai from 24.01.2012 to 25.01.2012 and then he was admitted at Puttur Bone Setting Hospital on 26.01.2012 and taken outpatient treatment for six months. Considering the period of treatment taken by the 1st respondent, an attender would have helped him during the period of



treatment to do his everyday activities, as his right leg got fractured. Hence, the compensation awarded by the Tribunal for attendant charges is reasonable.

13.It is the further case of the appellant-Insurance Company that in the absence of any medical bills, the Tribunal has awarded a sum of Rs.50,000/- towards medical expenses is concerned, even though the 1st respondent has taken treatment in the Government Hospital, he would have incurred some medical expenses. Further, the 1st respondent also produced Ex.P4 / O.P chits of Puttur Bone Setting Centre, Exs.P3 & P6 / X-Ray, Ex.P7 / X-Ray report. Further, this Court in *National Insurance Co. Ltd., Thanjavur Vs. Singaram @ Singaru and another* reported in [2014 (1) TNMAC 822], held that even when no medical bills are filed, the compensation for medical expenses can be granted. Hence, the compensation awarded by the Tribunal for medical expenses does not need any interference.

14.The 1st respondent has not produced any medical records to show that he has taken continuous medical treatment after filing the claim petition. If the claimant had undergone surgery by fixing implants, there will be a



necessity for removal. In the case on hand, no such surgery was undergone by the claimant. Therefore, a sum of Rs.25,000/- awarded by the Tribunal towards future medical expenses is hereby set aside.

15.In all other aspects, the award passed by the Tribunal appears to be reasonable and hence, needs no interference. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,000/-	75,000/-	Confirmed
2.	Pain and sufferings	1,00,000/-	75,000/-	Reduced
3.	Extra nourishment	75,000/-	50,000/-	Reduced
4.	Transportation	50,000/-	30,000/-	Reduced
5.	Damages to clothes	3,000/-	3,000/-	Confirmed
6.	Attendant charges	25,000/-	25,000/-	Confirmed
7.	Medical expenses	50,000/-	50,000/-	Confirmed
8.	Future medical expenses	25,000/-	-	Set aside
	Total	Rs.4,03,000/-	Rs.3,08,000/-	Reduced by Rs.95,000/-

16.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,03,000/- is hereby reduced to Rs.3,08,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is



directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.5970 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor 1st respondent attains majority. On such deposit made by the Tribunal, the mother of the 1st respondent, viz., Ilakkiya, is permitted to withdraw the accrued interest once in three months for the welfare of the minor 1st respondent. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.5970 of 2012, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

15.06.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

1.The IV Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.



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R.KALAIMATHI, J.

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