



C.M.A.No.877 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 877 of 2022
and C.M.P.No.877 of 2022

The Branch Manager,
Bharti AXA General Insurance Co. Ltd.,
II Floor, 965 Avinashi Road,
Coimbatore – 641 037.

... Appellant

Versus

1.Minor Naveen
rep. by his Guardian and father,
Rajkumar

2.K.Muruganantham

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 23.02.2016 passed in M.C.O.P. No.1240 of 2013, by the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tirupur.

For Appellant : Mr.K.Poomalai

For Respondents : No Appearance



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JUDGMENT

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2.The claim petition was filed stating that on 23.04.2013, the appellant was travelling with his father and mother in a vehicle bearing registration No.TN 42 A 4743; that at Kovai to Avinasi Main Road, near Kaneeyoor Poultry farm bus stop, the vehicle bearing registration No.TN 41 AC 4466, was driven by its driver in a rash and negligent manner and hit against the appellant's vehicle from behind. Due the which, the appellant sustained grievous injury and thus, he is entitled for compensation.

3.The appellant/Insurance Company filed counter denying all the averments made in the claim petition and stated that the accident occurred only due to the negligent act of the rider of the motorcycle in which the deceased was pillion rider and hence they are not liable to pay compensation. They also denied the age, occupation and income of the deceased. In any case, the compensation claimed is excessive and prayed



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for dismissal of the claim petition.

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4.Before the Tribunal, the 1st respondent/claimant examined three witnesses on his side and marked Ex.P.1 to Ex.P.31. On behalf of the appellant/Insurance Company no witness was examined and no document was marked.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the 2nd respondent and being the insurer of the 2nd respondent's vehicle, directed the appellant/Insurance Company to pay the compensation of Rs.4,00,000/- to the 1st respondent/claimant.

6.Aggrieved over the award passed by the Tribunal, the appellant/Insurance Company has filed the present appeal challenging the quantum of compensation.

7.Though the appellant has raised grounds with regard to negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation.



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8.Learned counsel appearing for the appellant/Insurance Company

would submit that the amount awarded by the Tribunal under various heads are excessive. The Tribunal ought not to have taken 36% as disability of the 1st respondent by merely accepting the evidence of P.W.3. He would further submit that P.W.3 was a private Doctor and the 1st respondent/claimant has not subjected himself to examination by the Medical Board. The compensation awarded by the Tribunal under the head loss of income during the treatment period does not arise, as the 1st respondent is a minor. The amounts awarded under other heads are also excessive and prayed for setting aside the award of the Tribunal.

9.Though notice has served on the respondents, none entered appearance for the respondents and hence, this Court is inclined to take up the case on merits.

10.The only question involved in the present appeal is whether the award of compensation is just and reasonable.

11.It is seen from the order of the Tribunal that the 1st respondent examined P.W.3 and produced Exs.P26 and P27/x-ray to establish the



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fact that the 1st respondent/claimant suffered fracture in leg and due to the said injury, the movements in the legs were restricted. After examining the 1st respondent, PW2-Doctor assessed 36% partial permanent disability. The appellant had not let in any evidence to disprove the said disability certificate issued by P.W.2. Hence, the Tribunal was right in accepting the disability certificate issued by P.W.2 and awarded compensation by adopting percentage method. Therefore, the award of the Tribunal under the head 'disability' cannot be faulted. As far as compensation under the head loss of income during the treatment period is concerned, considering the nature of injuries, the 1st respondent being minor, he would have been taken care by his guardian, i.e father who would have lost his income during the period of treatment. Hence, the amount awarded by the Tribunal is justifiable.

12.This Court finds no reasons to interfere with the said findings. The compensation awarded by the Tribunal under other heads are just and reasonable in the facts and circumstance of the case. Therefore, the appeal deserves to be dismissed.



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13.In view of the above, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the entire compensation awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the award amount is directed to be deposited in any one of the Nationalised Bank, till the minor attains majority. The father of the 1st respondent is permitted to withdraw the accrued interest once in three months. No costs. Consequently, connected miscellaneous petition is closed.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The II Additional District and Sessions Judge,
Motor Vehicle Accident Tribunal,
Tirupur.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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SUNDER MOHAN, J.

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