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C.M.A. No.2596 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2596 of 2018

and

C.M.P. No.19648 of 2018

The Divisional Manager
United India Insurance Co. Ltd.
Divisional Officer, MM Reddy Complex,
Old Bangalore Road, Hosur - 635 109

... Appellant

Vs.

1. Sakthivel
2. S.Sundaram

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the judgment and decree dated 02.06.2017 made in M.C.O.P.No.2494 of 2013 on the file of the Motor Accident Claims Tribunal (Spl. Sub-Judge) at Krishnagiri.

For Appellant : Mr.T.Ravichandran

For Respondents : M/s.Mukund R.Pandiyan for R1
M/s. R.Divyapreathika
for Mr.R.Bharath Kumar for R2



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C.M.A. No.2596 of 2017



J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 02.06.2017 made in M.C.O.P.No.2494 of 2013 on the file of the Motor Accident Claims Tribunal (Spl. Sub-Judge) at Krishnagiri.

2. The 1st respondent is the claimant. The 2nd respondent is the owner and the appellant is the insurer of the offending vehicle and they both arrayed as respondents 1 and 2 before the Tribunal.

3. The case of the claimant is that on 20.04.2005 at about 8.30 p.m, the claimant was walking on the left side of the road to his father's Mixer shop from his house. When he was coming near Venkateswara Cinema Theatre in Hosur-Old Bangalore Road, the rider of the Super XL bearing Regn. No.TN-29-L-6445, belonging to the 2nd respondent herein and insured with the appellant herein, drove the same in a rash and negligent manner and dashed against the claimant and caused the accident. Due to the impact, the claimant fell down and sustained injuries. Immediately, he was taken to Government Hospital at Hosur and admitted as inpatient and thereafter,



shifted to St. John's Hospital at Bangalore. The Hosur Traffic Investigation Wing Police registered a case against the rider of the said vehicle.

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4. The claimant filed a claim petition in M.C.O.P.No.2494 of 2013 on the file of the Motor Accident Claims Tribunal (Spl. Sub-Judge) at Krishnagiri, claiming compensation of Rs.10,00,000/- stating that at the time of accident, he was aged 14 years and was studying 8th standard in a Government Higher Secondary School and due to the accidental injuries, he was unable to continue his studies. Further, he was helping his father in his sweet stall and earning monthly income of Rs.5,000/- and after the accident, he was unable to continue the said work and thus suffered loss of income.

5. Before the Tribunal, the 2nd respondent herein/1st respondent was set ex-parte.

6. In order to substantiate his claim, on the side of the claimant, the claimant himself was examined as P.W.1 and 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondents, no oral and documentary evidence was let it. However, one Court document was marked as Ex.C1.



7. The learned counsel for the appellant/Insurance Company would submit that though the Medical Board had assessed the disability at 50%, but the Tribunal fixed only 25% towards loss of earning power and adopted multiplier method by fixing notional income of Rs.10,000/-, which is against the proposition of law laid down by the Hon'ble Supreme Court, in a similar case, in **Master Mallikarjun vs. Divisional Manager, National Insurance Company Ltd., and another reported in 2013 (2) TN MAC 338 (SC)**, for the injured child aged 12 years, awarded a lumpsum amount towards the disability. The claimant was a minor at the time of accident and he is a non-earning member. But the Tribunal has fixed notional income and also adopted multiplier method.

8. The learned counsel for the 1st respondent/claimant submitted that though the Medical Board assessed the disability at 50%, the Tribunal fixed only 25% towards the loss of earning power and considering the medical records, the Tribunal rightly adopted multiplier method. Therefore, there is no error in the findings of the Tribunal. Therefore, the appeal is liable to be dismissed.



9. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

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10. The accident is not in dispute, the liability is not in dispute and the insurance coverage is also not in dispute. The only dispute is with regard to the multiplier method adopted by the Tribunal in fixing the quantum instead of fixed compensation.

11. Admittedly at the time of accident, the claimant was only 14 years old and he was a non earning member. Under these circumstances, considering the decision of the Hon'ble Supreme Court, this Court set aside the order of the Tribunal with regard to adopting the multiplier method for fixing the compensation of Rs.4,50,000/- under the head "loss of earning power".

12. Since the Medical Board has assessed the disability at 50% and the Insurance Company has also not disputed the disability fixed by the Medical Board, taking into consideration of the disability certificate issued by the Medical Board which is marked as Ex.C.1, this Court awards compensation of Rs.4,00,000/- towards the disability.

13. Considering the nature of injuries, the compensation awarded by



the Tribunal under the head of "Nutrition Charges" is enhanced to **Rs.25,000/-** from Rs.10,000/-; the "Transport Charges" is enhanced to **Rs.15,000** from Rs.10,000/- and the "Damages to Clothing and Articles is enhanced to **Rs.2,000/-** from Rs.300/-.

14 .Since the claimant sustained fracture, certainly without assistance, he could not move to do his day to day affairs. Hence, the Attender Charges is enhanced to **Rs.15,000/-** from Rs.10,000/-.

15. Accordingly, the award passed by the Tribunal is re-worked as follows:-

S.No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1	Loss of earning power	Rs.4,50,000/- (10,000/- x12x25/100x15)	-	<i>Set aside</i>
2	Disability		Rs.4,00,000/-	<i>Awarded</i>
3	Medical Expenses	Rs.55,000/-	Rs.55,000/-	Confirmed
4	Future Medical Expenses	Nil	Nil	<i>Nil</i>
4	Transportation Charges	Rs.10,000/-	Rs.15,000/-	<i>Enhanced</i>
5	Nutrition Charges	Rs.10,000/-	Rs.25,000/-	<i>Enhanced</i>
6	Attender Charges	Rs.10,000/-	Rs.15,000/-	<i>Enhanced</i>
7	Pain and Sufferings	Rs.1,00,000/-	Rs.1,00,000/- -	<i>Confirmed</i>
8	Loss of Amenities and Enjoyment of life	Rs.1,00,000/-	Rs.1,00,000/- -	Confirmed



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S.No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
9	Damages to clothing and articles	Rs.300/-	Rs.2,000/-	Enhanced
	Total	Rs.7,35,300/-	Rs.7,12,000/-	Reduced

16. The award of the Tribunal is modified by reducing the compensation amount from **Rs.7,35,300/- to Rs.7,12,000/-**.

17. The appellant/Insurance Company is directed to deposit the modified award amount of **Rs.7,12,000/-** to the credit of M.C.O.P.No.2494 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) at Krishnagiri, with interest at the rate of 9% per annum, from the date of petition till the date of realization, less the amount if any already deposited, within a period of **eight weeks** from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The



Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs.
Rajesh and others).

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19. The appellant/Insurance Company is permitted to withdraw the excess amount if any already deposited by them before the Tribunal.

20. In the result, this Civil Miscellaneous Appeal is partly allowed with the above modifications. Consequently Connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

11.09.2023

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge, Bhavani.

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

C.M.A. No.2596 of 20





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P.VELMURUGAN. J.

ksa-2

C.M.A. No.2596 of 2018

11.09.2023