



C.M.A.(MD)No.1413 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.01.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1413 of 2016 and
C.M.P.(MD)No.11835 of 2016

The Branch Manager
National Insurance Company Limited,
7/1, West Car Street,
Sivakasi, Virudhunagar District.

... Appellant / 2nd respondent

Vs.

1.Minor.Dhinesh Kumar
(Minor is represented through his
father and natural guardian
J.Sivakumar)

... 1st Respondent /Petitioner

2.L.Murugeswari

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.20 of 2012, dated 10.07.2015, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sivakasi.

For Appellant

: Mr.D.Sivaraman

For Respondents

: Mr.M.Jothibasur for R1

: No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.20 of 2012, dated 10.07.2015, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sivakasi. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.20 of 2012, is as follows:-

On 21.08.2011, when the petitioner was riding his bicycle, a TATA Ace vehicle bearing Registration No.TN-67-L-5931 driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained head injuries. The petitioner claimed a sum of Rs.30,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.20 of 2012, is as follows:-

The manner of accident as narrated in the petition is wrong. The first respondent's driver drove the vehicle in a slow and cautious manner. It was the petitioner, who tried to cross the road in a negligent manner and he invited the



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accident. The treatment particulars are all denied. The age and education of the petitioner are all denied. The claim is excessive.

4. Four (4) witnesses were examined and 18 documents were marked on the side of the petitioner. 1 witness was examined and 1 document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 18,27,423/- as compensation to be paid by the second respondent.

5. Against the award, the appellant- Insurance Company has filed this Appeal on the following grounds:-

The Tribunal failed to note that the accident has happened only due to the negligence of the claimant himself. The Tribunal is wrong in fixing the income as Rs.9,000/- per month. The Tribunal failed to note that the petitioner is only a student, aged about 13 years. Only notional income as per the schedule ought to have been taken into consideration. The Tribunal is wrong in awarding Rs. 1,00,000/- towards disability, in addition to the amount, a sum of Rs.8,10,000/- was awarded towards loss of earning. The Tribunal is wrong in fixing the loss of earning capacity at 50% instead of assessing the functional disability, the Tribunal fixed the loss of earning at 50%, based on the report of the Doctor. The award of Rs. 3,00,000/- towards loss of marital life is not sustainable. It was not supported by any



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oral or documentary evidence. The Tribunal has awarded Rs.2,00,000/- towards loss of amenities, Rs.2,00,000/- towards pain and sufferings, which are all excessive.

The total award amount is excessive.

6. It is seen that F.I.R -Ex.P1 was registered against the driver of the TATA Ace vehicle. The observation mahazar was marked as Ex.P2. M.V.I. Report was marked as Ex.P3. Charge sheet was marked as Ex.P4. Judgment of the criminal Court was marked as Ex.P5. There is no contradictory evidence on the side of the respondents, regarding the manner of accident. Hence, it is decided that the accident has taken place only due to the rash and negligent driving of the driver of the TATA Ace vehicle.

7. On the side of the appellant, it is stated that the Tribunal is wrong in deciding that there was 50% loss of income on the side of the appellant. It is stated that only based on the report of the Doctor, the Tribunal has fixed the loss of income as 50%, which is wrong. The Tribunal ought to have fixed the functional disability, based on the evidence in an independent manner.

8. The Accident Information Report was marked as Ex.P6. Scan report was marked as Ex.P7. Discharge summary was marked as Ex.P8. Case sheet for the



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period from 21.08.2011 till 10.09.2011 was marked as Ex.P13. Disability certificate was marked as Ex.P14. Treatment particulars were marked as Ex.P15. X-Ray was marked as Ex.P16. Another disability certificate was marked as Ex.P17.

9. It is seen that the claimant sustained fracture on the skull and on the right side collar bone. The claimant took treatment in Rajaji Government Hospital, then, he took treatment in Srinivasa Multispeciality Hospital, Madurai. He has undergone 2 surgeries for the fracture in the skull. P.W.3 has deposed that the brain was affected. Based on the evidence of P.W.3 and based on the medical report, the Tribunal fixed the functional disability at 50% which is reasonable.

10. On the side of the appellant, it is stated that the Tribunal fixed the monthly income as Rs.9,000/- without any basis. The petitioner was only a student, aged about 13 years at the time of accident and only notional income prescribed under Schedule – II is to be adopted. At least notional income as prescribed by the Supreme Court is to be followed.

11. Considering the period of treatment as inpatient and considering the nature of injuries, it is decided that the claimant is entitled to loss of income by applying multiplier method. Considering the date of accident, the income is fixed as



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Rs.6,500/- per month. Considering the age of the claimant, it is decided that the multiplier '18' is applicable. For 50% (Rs.3,250/-) of disability, the claimant is entitled to Rs.7,02,000/- (Rs.3,250/- X 12 X 18) towards the loss of income.

12. On the side of the appellant, it is stated that the Tribunal has awarded Rs.1,00,000/- towards the disability. When multiplier method is adopted to fix the loss of income, there is no necessity to grant separate amount towards disability.

13. As per the judgment of the Hon'ble Supreme Court reported in ***AIR-2022-SC-5006 (Meena Devi V. Nunu Chand Mahto @ Nemchand Mahto)***, it is decided that the separate award for disability is not required, when multiplier method was adopted towards loss of income.

14. On the basis of Ex.P9 to Ex.P11, the Tribunal has awarded Rs.2,17,423/- towards medical expenses and the same is rounded off to Rs.2,17,500/-.

15. On the side of the appellant, it is stated that the Tribunal has awarded Rs.3,00,000/- towards loss of marital prospects, without any basis. It is stated that none of the Doctor on the side of the claimant stated anything regarding the marital



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prospects. There is no evidence regarding the loss of marital prospects. Hence, it is decided that the claimant is not entitled to any relief under this head.

16. The Tribunal has awarded Rs.2,00,000/- towards pain and sufferings. The Tribunal awarded Rs.2,00,000/- towards loss of amenities, which are all reasonable.

17. Considering the period of treatment, it is decided that the claimant is entitled to Rs.50,000/- towards attender charges. Considering the evidence of P.W.1 and P.W.3, it is decided that the claimant is entitled to Rs.2,00,000/- towards future medical expenses.

18. The total compensation is calculated as follows:-

Loss of income	:	Rs. 7,02,000/-
Medical expenses	:	Rs. 2,17,500/-
Pain and sufferings	:	Rs. 2,00,000/-
Loss of amenities	:	Rs. 2,00,000/-
Attender Charges	:	Rs. 50,000/-
Future medical expenses	:	Rs. 2,00,000/-
Total		 Rs. 15,69,500/-



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19. This Appeal is partly allowed. The compensation is reduced from Rs.18,27,423/- to Rs.15,69,500/-.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.15,69,500/- (Rupees Fifteen Lakhs Sixty Nine Thousand and Five Hundred only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the appellant / Insurance Company, the Tribunal is directed to deposit the entire award amount of the minor claimant / first respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The minor claimant's father, viz., J.Sivakumar, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimant is not entitled for interest for the default period, if there is any. No costs. Consequently, connected C.M.P. is closed.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sivakasi.

- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1413 of 2016

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