



CMA.No.3937 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.3937 of 2019
CMP.No.22351 of 2019

Reliance General Ins. Co Ltd
I Floor No.1, Binny Main Road,
Tiruppur.

... Appellant

Vs.

1.Minor Vishak
rep. by father Shamugam

2.R.Sivaprakash Pandi

3.Jothi Maheswari

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2018 made in MCOP. No.635 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

For Appellant : M/s.C.Bhuvaneswari

For Respondents : Mr.M.Logesh for R1
Notice returned for R2 and R3



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JUDGMENT

This appeal has been filed seeking to quash the judgment and decree dated 28.06.2018 made in MCOP. No.635 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur questioning the quantum and liability.

2. The claimant is a minor who was aged about 2 years old at the time of accident and he was represented by his father Shanmugam. It is the case of the claimant that on 03.05.2011 at about 17.30 hrs, when he was standing in front of the house at Mahaliamman Kovil Street, Kumaranandhapuram, a Omni car bearing No.TN 37-AY-5407 came in a rash and negligent manner dashed against the claimant. Due to the said accident, he sustained severe injuries in his right leg foot and abrasions all over the body. Thereafter, he was admitted in the Kumaran Hospital, Tiruppur as an inpatient. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation and the same was taken on file in M.C.O.P.No.635 of 2011.



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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, awarded a sum of Rs.6,04,600/- as compensation. The Tribunal directed the appellant/Insurance Company to pay the compensation to the claimant with interest at the rate of 7.5% p.a. Aggrieved by the said award, the appellant/Insurance company has filed the present appeal questioning their liability and quantum.

4.The learned counsel for the appellant submitted that the minor claimant crossed the road without any care and caution. The parents of the claimant left the minor to wander in the road and invited the mishap. Moreover, the tribunal has erroneously stated that the future earning capacity of the child has been reduced due to the accident and fixed a sum of Rs.3,000/-pm is too high. The other heads awarded by the Tribunal are also highly excessive, which needs to be interfered with.

5. Per contra, the learned counsel for the first respondent/claimant submitted that after considering the entire materials and witnesses, the Tribunal awarded compensation to the claimant, which is just and proper and the same does not warrant interference.



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6. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

7 Admittedly, the claimant was diagnosed with right foot dorsum. Considering the same, the Tribunal has fixed a sum of Rs.3,000/- as loss of future income, which is on the higher side. The claimant is aged about 2 years at the time of accident and loss of earning capacity is merely speculative. Hence, this Court is inclined to grant a sum of Rs.64,800/- (Rs.600 X 12 X 18 X 50%) towards the head of loss of monthly income. Further, the Tribunal has awarded a sum of Rs.50,000/- towards Nutrition and the same is reduced to Rs.25,000/- and this Court is not inclined to grant any amount under the head of Mental agony. The compensation awarded by the Tribunal under the other heads remains unaltered.



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8. The award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Monthly income	3,24,000	64,800
Medical Bills	25,528.50	25,528.50
Transportation Expenses	5,000	5,000
Nourishment	50,000	25,000
Pain and sufferings	50,000	50,000
Mental agony	50,000	-----
Loss of future life expectations	1,00,000/-	1,00,000/-
Total	6,04,528.50	2,70,328.50

9. The compensation awarded by the Tribunal at Rs.6,04,528.50/- is reduced to Rs. 2,70,328.50 (rounded off to Rs.2,70,400/-) (Rupees two lakh seventy thousand and four hundred only). The appellant insurance company is directed to deposit the entire award amount as ordered by this Court, less the amount already deposited, if any, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Upon



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such deposit, the Tribunal is directed to deposit the said amount in a Fixed Deposit account in any of the nationalized bank for a period of one year and renewable thereafter. Upon attaining majority, the claimant is directed to withdraw the award amount. Till he attains majority, the father of the claimant (Shanmugam) is permitted to withdraw the interest amount periodically. No costs. Consequently connected miscellaneous petition is closed.

05.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

msv

To

The Motor Accident Claims Tribunal,

Chief Judicial Magistrate, Tiruppur.



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