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C.M.A.No.1877 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1877 of 2021

and

C.M.P.No.10126 of 2021

National Insurance Company Limited,
No.37/2-E, Salem Main Road,
Mettur Dam,
R.S.Post Box No.19, Mettur Dam,
Salem - 636 402.

...Appellant

Vs.

1.Bhuvanesh
2.M.Varatharajan

...Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.11.2020 made in M.A.C.T.O.P.No.699 of 2016 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Dharmapuri.

For Appellant	: Mrs.N.B.Sureka
For R1	: Mr.C.Prabakaran
For R2	: No appearance



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J U D G M E N T

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The claim petitioner is the appellant herein challenging the award on the ground of liability and quantum.

2. The first respondent herein suffered injury in the road transport accident on 23.06.2016 and hence he filed the M.C.O.P.

3. The Insurance Company filed a counter statement alleging that at the time of the accident, the rider of the two wheeler who caused the accident is a minor and does not have any valid driving license on the date of the accident.

4. Before the trial Court, the claim petitioner examined himself as P.W.1 and Exs.P1 to P11 were marked. On the side of the respondent, R.W.1 Manager in R2 Company and Exs.R1 and R2 were marked.

5. In the final report filed before the learned Judicial Magistrate Court, it is shown that the driver of the two wheeler is a minor and does not have any driving license. The Tribunal has held that the accident has taken place due to the rash and negligence driving of the driver of the two wheeler and accordingly held that in view of the existence of the policy R2, the Insurance Company is liable to pay the compensation and awarded a sum of Rs.5,67,474/- and hence the appeal.



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6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

7. After perusing Ex.P10 Disability Certificate, I find that the Medical Board has assessed the permanent disability at 25% since the claim petitioner was worked as a Civil Engineer in a private Company and he is aged about 26 years, hence taking into consideration of the circumstances, the Medical Board has assessed as follows:-

- 1)Undisplaced right proximal Tibia fracture
- 2) Right Galeazzi's fracture

8. With regard to the percentage of the disability fixed by the Doctor under Ex.P10, this Court finds that it is on the higher side. As per Exs.P3, P8 -Xerox copy of discharge summary and Ex.P-2 wound certificate and nature of the injuries suffered by the claim petitioner is over assessed and accordingly, it is reduced from 25% to 15%.

9. Taking into consideration that the claim petitioner who is a Civil Engineer had suffered functional disability, I find that the ratio laid down in **2010 (2) TN MAC 581 [Raj Kumar Vs Ajay Kumar & another]** has to be applied and multiplier method to assess loss of earning capacity in the category of functional disability is to be determined and applying [Sarala Verma and



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Others Vs. Delhi Transport Corporation and another] for future prospectus

of 40%. Accordingly pecuniary loss sustained by him is re-assessed as follows:-

[8000x12x17x15/100=Rs.2,44,800/-]. The other heads are hereby confirmed.

10. Thus, the break-up details of the compensation is as under :

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Loss of Income	Rs. 4,08,000/-	Rs.2,44,800/-
2.	Loss of income during treatment period	Rs. 32,000/-	----
3.	Pain and suffering	Rs. 40,000/-	Rs. 40,000/-
4.	Extra Nourishment	Rs. 30,000/-	Rs. 30,000/-
5.	Attender charges	Rs. 10,000/-	Rs. 10,000/-
6.	Transport charges	Rs. 10,000/-	Rs. 10,000/-
7.	Medical Bills	Rs. 36,474/-	Rs. 36,474/-
8.	Cloth damages	Rs. 1,000/-	Rs. 1,000/-
	Total	Rs. 5,67,474/-	Rs. 3,72,274/-

In total, the first respondent is entitled to a sum of **Rs.3,72,274/- (Rupees**

Three Lakhs Seventy Two Thousand Two Hundred and Seventy Four only)

as compensation along with interest @ 7.5% per annum from the date of petition till the date of deposit.



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11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the award amount from **Rs.5,67,474/- to Rs.3,72,274/-** to the extent indicated above, along with 7.5% interest per annum.

(ii) the appellant/National Insurance Company Limited is directed to deposit the modified award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. Since on the date of the accident, the rider of the two wheeler does not possess any valid driving license, pay and recovery is ordered.

(iii) on such deposit being made, the first respondent/claim petitioner is permitted to withdraw the modified award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Appellant/National Company Limited is permitted to withdraw the excess amount lying in the deposit before the Tribunal, if the entire award amount has already been deposited by them.

(v) No costs. Consequently, connected Miscellaneous Petition is closed.

20.02.2024



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Index : Yes/No
Internet : Yes/No
Neutral Citation: Yes/No
Speaking Order: Yes/no

To

1. The Motor Accident Claims Tribunal
Special Subordinate Court, Dharmapuri.
2. The Section Officer,
V.R. Section, High Court of Madras, Chennai.



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RMT.TEEKAA RAMAN.J.

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Judgment made in
C.M.A.No.1877 of 2021

Dated:20.02.2024