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C.M.A.No.1950 of 2021
and
C.M.P.No.10508 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1950 of 2021

and

C.M.P.No.10508 of 2021

United India Insurance Co. Ltd.,
Branch Office,
No.171E, RKS Complex
1st Floor, P.J.Nehru Street
Villupuram-2.
Now at
Motor Third Party Service Hub
A.R.Plaza, No.35, 36 & 37
45 Feet Road Extension
Balaji Nagar, Puducherry-605 011

... Appellant

..Vs..

1.Minor Vimal Raj
2.Savitha Devi

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 27.11.2020 made in MCOP No.122 of 2018, on the file of the Special Sub Judge No.II, MACT, Villupuram.



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For Appellant : Mr.P.Sankaranarayanan
For Respondents : Mr.M.Pa.Thangavel for R1
No Appearance for R2

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned Award.

2. The main grievance of the Appellant/Insurance Company is that the Tribunal has erroneously accepted the disability certificate issued by the Medical Board in totality and the compensation awarded by the Tribunal towards pain and suffering, loss of amenities and loss of matrimonial prospects is on the higher side.

3. The learned counsel for the appellant would submit that the Medical Board while assessing the disability of the 1st respondent/claimant at 40% did not determine the disability based on Schedule I (Serial No.24)



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of the Employee's Compensation Act, 1923. According to him, if the same was duly considered, the Medical Board ought to have assessed the disability of the claimant only at 20% and not at 40%. Learned counsel for the appellant would also submit that the compensation awarded by the Tribunal under the heads a) pain and suffering, b) loss of amenities and c) loss of marital prospects is also on the higher side and it has to be reduced by this Court. However, on the contrary, the learned counsel for the 1st respondent/claimant would submit that since the claimant suffered amputation of his foot and he was minor, aged 8 years at the time of the accident, the compensation awarded by the Tribunal under the impugned award is a just compensation which does not call for any interference by this Court.

4. Insofar as the first contention raised by the Appellant/Insurance Company is concerned, the learned counsel for the appellant would rely upon Serial No.24 of Schedule I of the Employee's Compensation Act, 1923 which reads as follows:.



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24. Loss of all toes of one foot through the metatarso-

phalangeal joint - 20%

The learned counsel for the appellant drew the attention of this Court to the above to establish that the claimant had suffered only 20% disability. But, despite the same, the Medical Board has wrongly assessed the disability at 40%. On the contrary, the learned counsel for the 1st respondent/claimant drew the attention of this Court to Serial No.23 of Schedule I of the Employee's Compensation Act, 1923 which reads as follows:

23. Amputation through one foot proximal to the

metatarso- phalangeal joint - 50%

According to him, eventhough the Tribunal ought to have assessed the disability of the 1st respondent/claimant at 50% based on Serial No.23 of Schedule I of the Employee's Compensation Act 1923, the Tribunal has fixed the disability of the 1st respondent/claimant only at 40%. Therefore, according to him, the contention of the appellant/Insurance Company as stated supra has to be rejected.



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5. Admittedly, in the case on hand, the medical expert namely, the Medical Board has produced the disability certificate with regard to the disability of the 1st respondent/claimant and the Medical Board has assessed the disability of the 1st respondent/claimant at 40%. The Appellant/Insurance Company, if aggrieved by the report of the Medical Board ought to have cross examined the panel of doctors who have given the report which was taken into consideration by the Tribunal. The Tribunal has accepted the findings of the Medical Board and has assessed the disability of the 1st respondent/claimant at 40%. The photograph of the 1st respondent/claimant was also produced before the Tribunal which was marked as Ex.P10 series. The same was also perused by this Court. As seen from the same, the right foot of the 1st respondent/claimant has been amputated. Admittedly, the 1st respondent/claimant was aged 8 years at the time of the accident.

6. The learned counsel for the 1st respondent/claimant also drew the attention of this Court to Serial No.23 of Schedule-I of the Employee's



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Compensation Act, 1923 which discloses that for a case involving amputation of one foot proximal to the metatarso- phalangeal joint, the disability is fixed at 50%. Whether the Serial No.23 of Schedule-I of the Employee's Compensation Act applies or Serial No.24 Schedule-I of the Employee's Compensation Act applies cannot be adjudicated by this Court, as it is for the experts to decide the same. When the Medical Board's report is staring on at the face of the Appellant/Insurance Company, if they are aggrieved by the same, they ought to have examined additional witnesses and they ought to have cross examined the panel of doctors who have submitted the medical report. Having failed to do so, they cannot challenge the Medical Board's report in this appeal. The Tribunal has rightly accepted the findings of the Medical Board's report after giving due consideration to the fact that the right foot of the accident victim was amputated due to the accident caused by a vehicle insured with the Appellant/Insurance Company. Therefore, the first contention of the appellant is rejected by this Court.



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7. Insofar as the quantum of compensation awarded by the Tribunal is concerned, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation. Accordingly, the Tribunal has awarded the compensation of Rs.13,95,765/- as detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Permanent disability and future loss of income	7,77,600/-
Pain and Suffering, mental agony	2,00,000/-
Loss of amenities	1,00,000/-
Loss of matrimonial prospects	2,00,000/-
Extra Nourishment	20,000/-
Damages to cloths	1,000/-
Future medical expenses (to remove the plate)	50,000/-
Medical Bills	2,165/-
Transport	20,000/-
Attender charges	25,000/-
Total	13,95,765/- rounded off as Rs.13,96,000/-



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8. The overall compensation awarded by the Tribunal under the impugned award is a just compensation, considering the fact that the 1st respondent/claimant was a minor boy, aged 8 years at the time of the accident and his right foot has been amputated due to the injuries sustained by him as a result of an accident caused by a vehicle insured with the Appellant/Insurance Company.

9. For the foregoing reasons, there is no merit in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Appellant/Insurance Company is directed to deposit the Award amount together with interest at 7.5% per annum from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any, to the credit of MCOP.No.122 of 2018 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereafter.



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Since the claimant is a minor boy who has not attained majority, he is permitted to withdraw the accrued interest once in a year by filing an appropriate application. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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To

1.The Motor Accident Claims Tribunal/
Special Sub Judge No.II, Villupuram

1.The Section Officer
V.R.Section, High Court of Madras.

ABDUL QUDDHOSE, J.

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