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C.M.A.No.2235 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2235 of 2019

and

C.M.P.No.9514 of 2019

The Divisional Manager, Oriental Insurance Company Ltd.,
Divisional Office-X, “Dwaraka”,
Second Floor, 75, N.H. Road, Chennai – 600 004.

... Appellant

Vs.

1.Anwarkhan
2.A.Kuthalingam

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 09.01.2014 in M.C.O.P.No.1618 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Court), Krishnagiri.

For Appellant : Mr.K.Vinod

For R1 : Mr.S.P.Yuvaraj

For R2 : No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 09.01.2024 in M.C.O.P.No.1618 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge (MACT)), Krishnagiri (hereinafter referred to as "the Tribunal" for brevity).

2.Brief facts of the case are as follows :

On 29.05.2006, at about 10.00 a.m., when the 1st respondent was riding his bicycle slowly and cautiously on the left side of the road in Rayakottai to Hosur Road towards Hosur side, a K.R.M.S. Bus bearing Registration No.TN-29-F-9372, belonging to the 2nd respondent and insured with the appellant Insurance Company, came in a rash and negligent manner with uncontrollable speed without sounding horn, towards Hosur side and dashed on the 1st respondent. Due to the impact, the 1st respondent sustained fracture on his head and several other injuries all over the body. The 1st respondent was given First Aid in Rayakottai and then, he was referred to



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Government Headquarters Hospital, Dharmapuri. Thereafter, he took treatment in Government Hospital in Salem, and the 1st respondent continued to take private treatment in Krishnagiri and Dharmapuri. Therefore, the 1st respondent filed a claim petition before the Tribunal in M.C.O.P.No.1618 of 2013 claiming a compensation of Rs.7,00,000/- under various heads.

3.Before the Tribunal, the 1st respondent/claimant examined himself as P.W.1 and examined the Expert Doctor as P.W.2 and marked Exs.P1 to P9. No witness was examined nor any document was marked on the side of respondents before the Tribunal.

4.The Tribunal, on considering the oral and documentary evidence on record, taking into account the disability at 45%, awarded a sum of Rs.4,00,000/- for non-pecuniary damages such as pain and sufferings already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort and loss of amenities in life on account of permanent disability; Rs.25,000/- towards discomfort



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inconvenience and loss of earnings to the parents during the period of hospitalisation; Rs.25,000/- towards medical and incidental expenses during the period of hospitalisation and Rs.25,000/- towards future medical expenses for correction of fracture occipital bone and incidental expenses for such treatment. Totally, the Tribunal awarded a compensation of Rs.4,75,000/- with interest at the rate of 6% p.a. from the date of claim petition and directed the appellant/insurer of the Bus to deposit the compensation.

5. Aggrieved by the quantum of compensation, the Insurer of the Bus has preferred the above Appeal.

6. Learned counsel appearing for the appellant Insurance Company would submit that P.W.2 is not the Doctor who gave treatment to the 1st respondent. The learned counsel would further submit that the disability was not assessed by the Medical Board. He submitted that the Tribunal, without any discussion, has accepted the disability as 45% and has awarded a total compensation of Rs.4,75,000/- which is exorbitant and needs to be



interfered.

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7.*Per contra*, learned counsel appearing for the 1st respondent would submit that the Tribunal has rightly appreciated the evidence on record and awarded the compensation, which is just and reasonable.

8.This Court heard the submissions of the learned counsel on either side and perused the entire materials available on record.

9.The accident and the manner in which the accident had occurred, is not in dispute. The liability on the appellant Insurance Company, who is the insurer of the Bus, is also not in dispute. The quantum alone is questioned in this Appeal. It is seen that the Tribunal has not given any breakup for fixing a sum of Rs.4,00,000/- towards permanent disability sustained by the 1st respondent. Admittedly, P.W.2-Doctor is not the Doctor who has given treatment to the claimant. P.W.2 has assessed the disability at 45%, however, the claimant was not referred to any Medical Board for independent assessment of disability. Even in the absence of any report



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from the Medical Board, the Tribunal has accepted the entire disability at 45% and awarded a lumpsum of Rs.4,00,000/- without any breakup.

Therefore, this Court is inclined to interfere with the same and accordingly, reduces the percentage of disability to 40%. The 1st respondent/claimant claimed that he was earning a sum of Rs.3,000/- per month. However, the claimant has not let in any evidence to prove the monthly income. The accident was in the year 2006. At the relevant point of time, the fixed quantum per percentage of disability is Rs.2,000/- per month. However, the Tribunal, without any discussion, awarded a sum of Rs.4,00,000/-, which is not sustainable. Accordingly, the amount awarded towards disability is reduced to Rs.80,000/- ($40 \times 2,000/- = 80,000/-$). As regards other heads, since there is no breakup under each head, this Court sets aside the Award amounts under other heads by the Tribunal and the compensation under other heads are re-assessed as follows :

<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
Permanent Disability	Rs.4,00,000/-	Rs.80,000/-
Discomfort inconvenience and loss of earnings to the parents during the period of hospitalisation	Rs.25,000/-	--



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<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
Medical and incidental expenses during the period of hospitalisation	Rs.25,000/-	--
Future medical expenses for correction of fracture occipital bone and incidental expenses for such treatment	Rs.25,000/-	--
Pain and sufferings	--	Rs.40,000/-
Nutritious food	--	Rs.20,000/-
Transportation to Hospital	--	Rs.10,000/-
Attendant Charges	--	Rs.10,000/-
Loss of future amenities	--	Rs.40,000/-
Total	Rs.4,75,000/-	Rs.2,00,000/-

10. Therefore, the total compensation awarded by the Tribunal is reduced to Rs.2,00,000/- (Rupees Two Lakhs only) along with interest at the rate of 6% p.a. from the date of claim petition till the date of realisation.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The judgment and decree of the judgment and decree dated 09.01.2024 in M.C.O.P.No.1618 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge (MACT)), Krishnagiri, is modified to the above extent only in respect of the quantum of compensation.



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12.The appellant Insurance Company is directed to deposit the modified award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount, if any, already deposited. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the modified award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, by making proper and necessary application before the Tribunal. The 1st respondent/claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2024

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Internet : Yes
Index : Yes / No
Speaking order / Non-Speaking order
Neutral Citation : Yes / No



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To

The Motor Accident Claims Tribunal
(Special Sub-Court),
Krishnagiri.



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M. DHANDAPANI, J.

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