



C.M.A.(MD).No.9 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.(MD).No.9 of 2024
and
C.M.P.(MD).No.231 of 2024

1.The Manager,
National Insurance Company Limited,
3, 2nd Floor, Lakshmi Nagar,
Delhi – 110 092.

2.The Regional Manager,
M/s.National Insurance Company Limited,
No.33, Contonment,
Trichy – 620 001.

.. Appellants/Respondents 2 & 3

Vs.

1.Diliban

.. 1st Respondent/Petitioner

2.R.Krishnamurthi

.. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying to set aside the fair and decretal order dated 03.08.2022 made in M.C.O.P.No.536 of 2020 on the file of the Motor Accident Claims Tribunal (III Additional Sub Judge), Trichy, and allow this appeal.



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For Appellants : Mr.S.Srinivasa Raghavan

For R-1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded to the first respondent/claimant, who had sustained 85% disability as per the opinion given by the Medical Board.

2. The claim petition was filed on the ground that on 07.06.2020 at about 8.30 PM, when the first respondent/claimant was riding his Splendor two wheeler bearing Registration No.TN 48 C 3249, another Splendor Plus two wheeler bearing Registration No.TN 48 AR 6880 negligently dashed against him causing severe injuries all over his body. He was taken to a private hospital, by name, Atlas Hospital in an ambulance and got admitted as inpatient. After treatment, he was discharged on 16.06.2020. A surgery



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was conducted for the fractured limbs and crushed little finger. He also sustained injury on his left eye, for which, surgery was conducted. He was again admitted twice in the hospital as inpatient for follow up treatment. Claiming a sum of Rs.50,00,000/- as compensation, the claim petition under the Motor Vehicles Act was preferred by the first respondent/claimant before the Motor Accident Claims Tribunal (III Additional Sub Court), Tiruchirappalli in M.C.O.P.No.536 of 2020.

3. The Tribunal, on considering the evidences, fixed the monthly income of the first respondent/claimant at Rs.10,000/- and restricted his claim to a total sum of Rs.34,18,341/- with 7.5% interest from the date of filing of the claim petition till realisation.

4. The aforesaid award is impugned in the present Civil Miscellaneous Appeal by the Insurance Company on the ground that the claimant has not produced any evidence to prove his income. The material placed before the Tribunal does not disclose the permanent functional disability to award 40% towards the future prospects, which principle is



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applicable only in case of death or 100% functional disability. That apart, the claim towards medical expenses, pain and suffering was also disputed.

5. The learned counsel appearing for the first respondent/claimant submitted that the claimant is a professional driver holding valid driving licence. Though the claimant contended that his monthly income is Rs.30,000/-, the Tribunal has restricted it to Rs.10,000/- only. The opinion given by the Medical Board though does not indicate that the claimant is 100% disabled to carry on his profession and there is total functional disability to carry on his avocation as a driver, the nature of injury speaks for itself and therefore, the award of 40% towards the future prospects cannot be questioned.

6. Heard the learned counsels and perused the materials available on record.

7. Diliban, the first respondent/claimant was 30 years old on the date of accident. After substantial treatment for four years, he had been



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diagnosed with right sided global brachial plexus palsy. His locomotor movement substantially restricted, particularly, he cannot lift his right hand beyond 90 degree. He was referred to the Medical Board and the members of the Medical Board had opined that the fracture of both bone and right leg and right side global brachial plexus palsy has caused 85% permanent disability to the injuries suffered. In the light of the opinion given by the Medical Board, the nature of avocation carried by the claimant, if to be read in harmoniously, there can be no doubt that this injury has caused 100% functional disability to the first respondent/claimant, who cannot henceforth drive a vehicle to earn his livelihood. His earning capacity as a driver has been totally taken away. He has to find alternate source of income and whether he can make equal amount of income or not cannot be predicted.

8. In view of the above, this Court finds that the quantum of compensation awarded by the Tribunal is proportionate and need not be interfered with. Hence, the Civil Miscellaneous Appeal is dismissed. The learned counsel for the appellants/Insurance Company states that the entire amount with interest has already been deposited. If so, the first



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respondent/claimant shall withdraw the same in toto on proper application and identification. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
11.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Motor Accident Claims Tribunal (III Additional Sub Court),
Trichy.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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