



C.M.A.(MD)No.377 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 377 of 2024
and C.M.P(MD)No.5069 of 2024

The Branch Manager,
Reliance General Insurance Company Limited,
Thazha Plaza, Bye Pass Road,
Tirunelveli - 2

... Appellant/Respondent No.3

Vs.

..1st Respondent/Petitioner

1.Mejo
2.Cleetus
3.The Chairman,
Udaya College,Udaya Nagar,
Vellamodi,Ammandivilai Post,
Kanaykumari District.

4.Pandian @ Veera Soora Perumal

5.P.Jayasuthan

6.Iffco-Tokio General Insurance Company Limited,
82, Chandragandhi Nagar, Bypass Road,
Madurai

...Respondents 2 to 5/Respondents 1, 2, 3 to 5

(The appellant has given up the appeal as against the respondent Nos.2, 4 to 6 above named)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 6th December 2023 passed in M.C.O.P.No.67 of 2017 on the file of the Motor Accident Claims Tribunal Judge (Subordinate Judge) of Kuzhithurai.

For Appellant : Mr.V.Sakthivel

For R1 : Mr.A.Balakrishnan

R3 : No appearance

For R2,R4 to R6 : Given up



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JUDGMENT

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The Insurance Company has filed this Civil Miscellaneous Appeal against the judgment and decree dated 06.12.2023 passed in M.C.O.P.No. 67 of 2017 on the file of the Motor Accident Claims Tribunal Judge (Subordinate Judge) of Kuzhithurai.

2. The 1st respondent herein filed a claim petition stating that on 13.10.2015, while he was travelling in a bike as a pillion rider, a bus insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, as a result of which, the 1st respondent suffered severe injuries. The 1st respondent has filed the claim petition against the driver, owner of the offending vehicle and the appellant, besides the rider of the two wheeler and the Insurance Company of the two wheeler.

3. The appellant Insurance Company filed a counter stating that the accident took place only due to the negligent riding of the two wheeler rider and that the appellant is not liable to pay compensation and in any case, the compensation claimed was excessive.



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4. The other respondents filed a counter denying the averments in the claim petition.

5. The 1st respondent/claimant examined himself as P.W.1 and the Doctor as P.W.2 besides marking Ex.P.1 to Ex.P.13. The appellant neither examined any witness nor marked any document.

6. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a total compensation of Rs.8,42,964/-.

7. The learned counsel for the appellant submitted that they had challenged the award only aggrieved by the quantum of compensation awarded by the Tribunal. The learned counsel for the appellant would vehemently oppose the grant of compensation under the head 'compensation for the injuries'. According to him, the Tribunal, without any basis, had awarded Rs.4 lakhs under the heading 'compensation for the injuries', which is contrary to the settled position of law and that the compensation awarded under other heads is also excessive and prayed for reduction of compensation.



8. The 1st respondent/claimant per contra submitted that the award of compensation is just and reasonable, as the claimant, who was 13 years old at the time of accident, a bright student, whose ambition has been thwarted by the accident, is entitled to the compensation awarded by the Tribunal and hence, prayed for dismissal of the appeal.

9. Notice to other respondents is dispensed with in the light of the issue involved in the instant appeal.

10. The only question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11.Concededly, the accident took place due to the rash and negligent driving of the driver of the offending vehicle. The appellant had not let-in any evidence to disprove the evidence let-in on the side of the 1st respondent on this aspect. In any case, there is no challenge to the finding of negligence.

12. As regards quantum, it is seen that the Tribunal was swayed by the fact that the 1st respondent had an ambition to become a police officer



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or an army officer and his ambition could not be accomplished because of the accident and therefore, had awarded Rs.4 lakhs as compensation.

This Court finds that the manner in which the compensation was awarded is not in accordance with the settled position of law. Ex.P.9 is the disability certificate issued by the Doctor, which indicates that the 1st respondent suffered disability at 15%. No evidence has been let-in to show that the 1st respondent had suffered any functional disability. Therefore, this Court is of the view that the compensation for the injury suffered can be awarded on a percentage basis at the rate of Rs.5000/- for a percentage. Thus, the award of compensation under the head of injuries is reduced to Rs.75,000/-.

13. The award of compensation under the head of pain and suffering is reasonable and hence, confirmed. The award under the head medical expenses is granted on the basis of the medical bills and hence, confirmed. The award under the heads nourishment expenses, attendant charges and transport charges is also confirmed.

14. The medical records namely, Ex.P.7, wound certificate, Ex.P.8, the treatment and discharge summary and other documents show that the



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1st respondent underwent surgery on 13.10.2015 for the fracture in the right tibia which involved fixation of a plate with screws. There was a need for surgery for removal of the plate and also for continuous treatment besides physiotherapy. Though the 1st respondent had produced Ex.P.11, an Estimate for implant removal, for Rs.60,000/-, this Court is of the view that the Tribunal ought to have considered the other incidental expenses, which would be involved for future medical expenses such as, physiotherapy, attendant charges etc. In the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to fix Rs.2 lakhs towards future medical expenses, physiotherapy charges and other incidental expenses for complete recovery. Therefore, the award of the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Compensation for injuries	4,00,000.00	75,000.00
2.	Pain and suffering	2,00,000.00	2,00,000.00
3.	Medical expenses	1,42,964.00	1,42,964.00
4.	Future medical expenses	60,000.00	2,00,000.00
5.	Nutrition expenses	10,000.00	10,000.00
6.	Attendant Expenses	20,000.00	20,000.00
7.	Transport Charges	10,000.00	10,000.00
Total :		8,42,964.00	6,57,964.00



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15. The appellant Insurance Company shall deposit the award amount after deducting the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same on filing a suitable application before the Tribunal.

16. In fine, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To
1. Motor Accident Claims Tribunal Judge,
(Subordinate Judge) of Kuzhithurai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No. 377 of 2024
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