



C.M.A(MD)No.987 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.987 of 2022
and
C.M.P(MD)No.9778 of 2022

The Branch Manager,
Reliance General Insurance Company Ltd.,
178,2nd Floor, 10th Cross,
Thillai Nagar East,
Trichy-620 018.

: Appellant/Respondent No.4

Vs.

1.Minor Rajesh
represented through his father as guardian
Mr.Ilangovan
Son of Arunachalam

:: Respondent No.1/Petitioner

2.Mr.A.Pavul Peter
3.Mr.A.Prabhakaran
4.The General Manager,
Reliance General Insurance Company Limited,
19,Reliance Centre,
Walon and Hirachenal Marg,
Ballard Estate,
Mumbai-400 001.

:Respondents 2 to 4/
Respondents 1 to 3



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award and decree dated 14.02.2022 passed in MCOP No.358 of 2020, on the file of the Motor Accident Claims Tribunal (Principal District Judge) Pudukkottai.

For Appellant : Mr.V.Sakthivel
For R1 : Mr.H.Arumugam
For R2 to R4 : No appearance

JUDGMENT

[Judgment of the Court was made by

K.K. RAMAKRISHNAN.J.]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Principal District Judge) Pudukkottai in M.C.O.P.No. 358 of 2020, dated 14.02.2022, the Insurance company has filed the present appeal.

2. For the sake of convenience, the parties are referred herein as per their ranking before the Tribunal.



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3. The appellant Insurance Company is the fourth respondent in M.C.O.P.No.358 of 2020, on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Judge, Pudukkottai. The minor first respondent is the claimant. The minor claimant filed the claim petition in M.C.O.P.No.358 of 2020, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation for the injuries sustained by him in the accident that occurred on 10.03.2020. By the award, dated 14.02.2022, the Tribunal awarded a sum of Rs.29,41,697/- (Rupees Twenty Nine Lakhs Fortyone Thousand Six hundred ninety seven only) as compensation.

4.Facts of the Case:-

The petitioner Ilangovan filed the claim petition seeking compensation for his minor son Rajesh. According to the claimant, at the time of accident, the petitioner's minor son Rajesh was aged about 9 years and studying 3rd standard at Manjuvidhudhi Government Primary School. On 10.03.2020 at about 07.00 a.m. the petitioner's minor son returning back from his aunt Panchavarnam's house to his house from



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Karambakkudi to Pattathikaadu Road, near Manjuvidhudhi Bust stop from south to North by his small bicycle. At that time, the Black colour bullet two-wheeler which belonging to the first respondent bearing registration No.TN-55-BQ-5359 coming from the opposite side from North to South which was driven by the second respondent in a rash and negligent manner and hit against the minor Rajesh and the minor also sustained grievous injuries on his left eyebrow, left forehead, left neck and the C5,C6, C7 and C8 nerves are damaged and fracture on the left rib and grievous injuries on the left rib and grievous injuries on the left ear, and head and also heart problem and other injuries. Then the petitioner's minor son was taken to Karambakkudi Government Hospital by his father and his uncle in a cab and had acquired first aid to the minor Rajesh. Then, he is referred to K.G.Hospital, Tanjore for further treatment and has undergone heart surgery and surgery for fracture on the left rib and other injuries. The bleeding of head and rib affected the lungs and he suffered from wheezing and had undergone further open surgery for removing the blood clot on the lungs and operated on endoscopy. Further he was maintained in the ICU with ventilator and has undergone another surgery for not functioning of heart. The minor Rajesh's left hand is disabled.



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Then, from 10.03.2020 to 03.04.2020 he was admitted as an inpatient in K.G.Hospital later he was treated as an outpatient. He further got treatment from Dr.Ravi Artho, in Shri Naadi Hospital, Pattukkottai for his left hand disability He referred Ganga Hospital, Coimbatore for further treatment. Later on 06.07.2020 the Ganga Hospital, Coimbatore has stated that C5, C6, C7, C8 nerves were disabled and has to undergo operation. Due to the accident, the petitioner's minor son cannot able to do his daily works and to concentrate in his studies and he need others support for doing all activities. Therefore, he filed the claim petition, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.

5. The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the second respondent had driven the two-wheeler carefully and slowly, suddenly, the petitioner's minor son, did not know to control his bicycle, crossed the second respondent's two-wheeler and collide with his two-wheeler and fell down and has voluntarily caused the accident. Hence, these respondents are not liable to pay any compensation for the victim minor



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Rajesh and prayed for dismissal of the claim petition.

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6. Before the Tribunal, on the side of the claimant P.W.1 was examined and Ex.P1 to Ex.P22 were marked. Court witness one Geetha was examined as C.W.1 and the Court document Ex.C1 disability certificate was marked.

7. The Tribunal, considering the pleadings, oral and documentary evidence of P.W.1 and Ex.P1-FIR and arguments of the counsel for the claimant and the respondents, held that the driver of the first respondent namely the second respondent alone is negligent and he is the cause for the accident and fixed the negligence on the part of the driver of the first respondent namely, the second respondent and the respondents 1 to 4 are liable to satisfy the award and awarded a sum Rs.29,41,697/- as compensation.

8. Aggrieved against the said award, dated 14.02.2022, the Insurance Company has filed the present appeal. The appellant has preferred this appeal only challenging “the quantum of compensation”.



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9. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the fourth respondent and also perused all the materials available on record.

10. The following points arise for consideration in this appeal:

10.1. Whether the compensation granted is in accordance with law?

11. **Submission of the learned counsel for the appellant.**

The learned counsel for the appellant would submit that the Tribunal erred in awarding compensation by directing the appellant to pay the compensation to the claimant. The Tribunal has failed to follow the principles laid down by the ***Rajkumar – vs- Ajay Kumar 2011(1) SCC 343***. The Tribunal was erred in fixing 75 percent as functional disability of the claimant and was erred in awarding compensation as multiplier method taking 75 percent as functional disability.

(ii) The Tribunal was erred in fixing the income of the claimant as Rs.12,480/- without considering the fact that the first respondent was



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aged about 9 years at the time of accident. The learned Tribunal was erred in awarding compensation under the head of future comfort to the tune of Rs.1,00,000/-. The learned Tribunal was erred in awarding compensation to the tune of Rs.2,00,000/- towards loss of marital bliss and other amenities and prayed for allowing the appeal.

12. Per contra, the learned counsel for the claimant contented that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

13. Heard the rival submissions made by both sides and perused the materials available on record.

14. So far as the quantum is concerned, the minor petitioner sustained injury in the road accident and he claimed that there was a fracture in left rib and also heart problem and he would state that in his petition that he sustained following injuries:



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- 1.grievous injury in left eyebrow*
- 2.grievous injury in left forehead*
- 3.grievous injury in left neck*
- 4.Fracture in left rib*
- 5.C5, C6, C7 and C8 nerves damaged*
- 6.grievous injuries in left ear*
- 7.grievous injuries in head*
- 8.Heart problem (surgery) perpetual problems*

Hence, he was referred to Medical Board and the Medical Board has assessed the permanent partial disability at 80% which was not disputed by the respondents. The doctor C.W.1 was summoned before the tribunal and the report by the Medical Board was marked as Ex.C1 to the effect assessing permanent disability at 80%. As per the report Ex.C1 and the evidence of C.W.1, the entire left hand has become disabled for a young boy aged 9 years and the entire tendons and the nerves have become disabled and the left hand have become useless and there is no possibility of using his left hand for his life time and the spinal cord in respect of C5 and C6 have become disabled which will certainly cause serious



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consequences in future. The disability of 80% was not disputed by the second respondent in his cross-examination.

15. The petitioner is a young toddler aged 9 years and his entire carrier will be jeopardised to the maximum extent. To put it other way the petitioner has lost his hands in the young age even before his teen and stigma as well as the shame cannot be valued in money which will certainly jeopardise his carried advancement to 75% as he has lost one hand in the youngest age and hence, the tribunal applying illustration (b) given by Hon'ble High Court in the case of the Managing Director, Metropolitan, Chennai vs. K.K.Bindu taken 75% as functional disability having considered the petitioner's pitiable condition in the young age though the petitioner have lost his left hand alone but the consequence of the same is very serious as it will entirely affect his carried progress. Though 80% was fixed by the Medical Board as permanent total disability, the Tribunal has fixed 75% as functional disability owing to the long life has to be advanced by the petitioner for achieving the carrier if any available.



16. In this aspect, we are of the view that the tribunal has correctly fixed the functional disability as 75% and there is no interference is required.

17. In so far as the adoption of multiplier method to the injury case are concerned, the Tribunal has referred the judgment in **2010(2) TN MAC 356 (SC) Yadav Kumar V. The Divisional Manager, National Insurance Co., Ltd., and another** and by following the judgment of **Sarla Verma and others V.Delhi Transport Corporation and another** reported in **2009(2) TNMAC 1 (SC)**, taken the multiplier as 15 for the age of 9 years and fixed the notional income at Rs.12,480/- and calculated the loss of earning capacity as follows:

$$\text{Rs.12,480} \times 12 \times 15 \times 75 = \text{Rs.16,84,800/-}$$

18. The Tribunal considering the Ex.P10 to ex.P12 medical bills, granted a sum of Rs.6,93,897/- towards medical expenses. Further, granted a sum of Rs.2,00,000/- towards pain and suffering by considering the injuries sustained by the minor petitioner. Rs.25,000/- was granted towards attended charges and Rs.1,00,000/- was granted for loss of future comfort and Rs.2,00,000/- was granted towards loss of marital bliss and other amenities. Further, the tribunal awarded a sum of Rs.38,000/-



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towards transport expenses as per Ex.P13 trip sheet. Totally, the tribunal awarded a sum of Rs.29,41,697/-.

19. Considering all these aspects, the tribunal has rightly awarded the compensation to the claimant. Therefore, the award of the tribunal in all the heads are just and reasonable and the same are confirmed and there is no interference is required.

20. In the result, the appeal is dismissed confirming the award and decree passed by the Motor Accident Claim Tribunal, Principal District and Sessions Judge, Pudukkottai in M.C.O.P.No.358 of 2020, dated 14.02.2022. The interest at the rate of 7.5% is maintained. The appellant is directed to deposit the award amount, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

**(V.B.S.J.) (K.K.R.K.J.)
18.03.2024**

Index: Yes/No
Internet: Yes/No
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- To**
- 1.The Motor Accident Claims Tribunal
(Principal District Judge) Pudukkottai.
 - 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

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