

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 2619 of 2011

&

M.P. No. 1 of 2014

Minor Aruna Devi

rep. By guardian/father,
Boominathan

...Appellant/Petitioner

Vs.

1. Ravichandran

2. The United India Insurance Company
Limited,
Motor 3rd Party Claims Offices,
South India Co-operative Buildings,
III Floor, No.38, Anna Salai,
Madras - 2.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.09.2004 passed in M.C.O.P. No. 116 of 2004 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Chengalpattu.

For Appellant :: Mr.A. Babu

For Respondents:: Mrs.Harini for
Mr.N. Vijayaraghavan for R2

सत्यमेव जयते
J U D G M E N T

This is a very unfortunate case where a girl child, who was hardly aged about 5 years, while travelling with her parents, in a very happy and joyous mood, unaware of what destiny had in store for her, in the bus belonging to the 1st respondent and insured with the 2nd respondent, met with an accident, on 21.06.1999, when the said bus, in which she was travelling, capsized, on account of rash and negligent driving, resulting in her sustaining grievous injuries. This Civil Miscellaneous Appeal has been preferred by her, as against the negligible amount of Rs.95,000/- granted by the Tribunal as compensation, for the injuries sustained by her, in the said accident.

2. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

3. The appeal has been preferred only by the injured and not by the Insurance Company. Therefore, the question of negligence is not gone into and the only issue in question is with regard to the adequacy of quantum.

4. The claimant was aged about 5 years at the time of accident and it is an admitted fact that she sustained injuries on her skull and lost her vision in the right eye. Soon after the accident, she was admitted in JSP Private Hospital, Chengalpattu and thereafter, she was transferred to Government General Hospital, Chennai. She took further treatment for her eye problem in Government Eye Hospital, Egmore. A perusal of Ex-P2, Discharge Summary, issued by the Government General Hospital, Chennai would show that the minor appellant was treated as an in-patient from 12.07.1999 to 31.08.1999 for about 52 days and in Chengalpattu Government Hospital, she was treated as an out-patient on 20.11.1999 and 23.11.1999. Similarly, as per Ex-P4 series, she was treated in Kovathur Hospital on 01.09.1999, 03.09.1999, 05.09.1999, 07.09.1999 and 13.09.1999. P.W.2, Doctor, who worked as Assistant Medical Officer, Chengalpattu Medical College Hospital, Chengalpattu, deposed that the appellant sustained head injury; lost her frontal bone due to the accident and also lost her vision in the right eye. Ex-P8 is the Disability Certificate issued by him. P.W.3 is the Ophthalmologist, attached to Chengalpattu Medical College Hospital, Chengalpattu, who deposed about the appellant losing her right eye vision, as evidenced by Ex-P9, Disability Certificate, issued by him. The other documents, namely, Exs-P5 to P8, would prove that the minor appellant has been taking continuous treatment for the injuries sustained by her. Ex-P7 is the photograph of the minor appellant, which would establish the disfigurement of her head and face on account of the injuries sustained by her. In spite of the injuries and disability sustained by the minor appellant, the Tribunal did not appreciate the matter in a proper perspective while awarding compensation and awarded only a sum of Rs.30,000/- for the injuries suffered by her. No prudent person would award Rs.30,000/- even after seeing Ex-P7, the photograph of the minor. It is rather unfortunate that a Judicial Officer has done so, which is unjustifiable. Hence, in the circumstances of the case, this Court deems it fit to adopt multiplier method to calculate the compensation payable to the minor appellant for the disability sustained by her.

5. The Honourable Apex Court, in Kishen Gopal Verma and another V. Lala and Others, reported in 2013 ACJ 2594, for the death of a 10 year old child, took Rs.30,000/- as annual notional income and awarded a sum of Rs.4,50,000/- towards "Loss of Income". Following the said judgment, Rs.30,000/- is taken as annual notional income of the minor appellant and as per II Schedule to the Motor Vehicles Act, 1988, upto the age of 15 years, the multiplier to be adopted is 15 and therefore, "Loss of Income" would be Rs.30,000 x 15 = Rs.4,50,000/-.

6. The child, who was aged about 5 years, at the time of accident, would not have had the will power and strength to endure the pain and suffering, which she underwent, on account of the injuries sustained by her, at the time of accident and subsequently, during treatment as well. Therefore, a sum of Rs.1 lakh is awarded towards "Pain and Suffering". A perusal of Ex-P7, photograph would, undoubtedly, make it clear that her face got disfigured because of the injuries. A portion of the skull has also been removed and the photograph shows loss of hair growth in that area. Her right eye is completely closed. Therefore, for "Loss of Amenities" and for "Disfigurement", a sum of Rs.1 lakh is awarded. Being a child, she should be given "Extra Nourishment" for recuperating and therefore, a sum of Rs.50,000/- is awarded towards the same. Even as far as a normal girl child is concerned, marriage is proving to be a costly affair. That being so, it may not be an easy task to get a girl child married, with disfigurement and loss of vision in one eye and the prospects would be very bleak. Therefore, a sum of Rs.2 lakhs is awarded towards "Loss of Marital Prospects".

7. The minor appellant was hospitalised in various hospitals and took treatment in various places, during which expenses would have been incurred towards transportation. Therefore, a sum of Rs.50,000/- is awarded towards "Transportation Expenses". Further, for "Attendant Charges", a sum of Rs.50,000/- is awarded. In the eventuality of the minor appellant undergoing cosmetic surgery or fixation of artificial eye in future, substantial amount will have to be spent and therefore, she has to be adequately compensated. Hence, a sum of Rs. 1 lakh is awarded towards "Future Medical Expenses" .

8. In all, the award of the Tribunal, to the tune of Rs.95,000/- is enhanced to Rs.11 lakhs. The rate of interest for the enhanced amount would be 7.5% per annum. The Civil Miscellaneous Appeal is allowed. No costs.

9. The 2nd respondent Insurance Company is directed to deposit 50% of the amount, as per the modified award passed by this Court, with interest, before the Tribunal, within a period four weeks from the date of receipt of a copy of this order. On such deposit being made, the father of the minor appellant is permitted to withdraw the entire amount. The balance award amount shall be deposited in any one

of the Nationalised Banks, in interest bearing Fixed Deposit, at least for a period of five years.

Sd/-
Deputy Registrar
Dated:13.2.15

True Copy

Sub Assistant Registrar

To

The MACT (CJM), Chengalpattu.

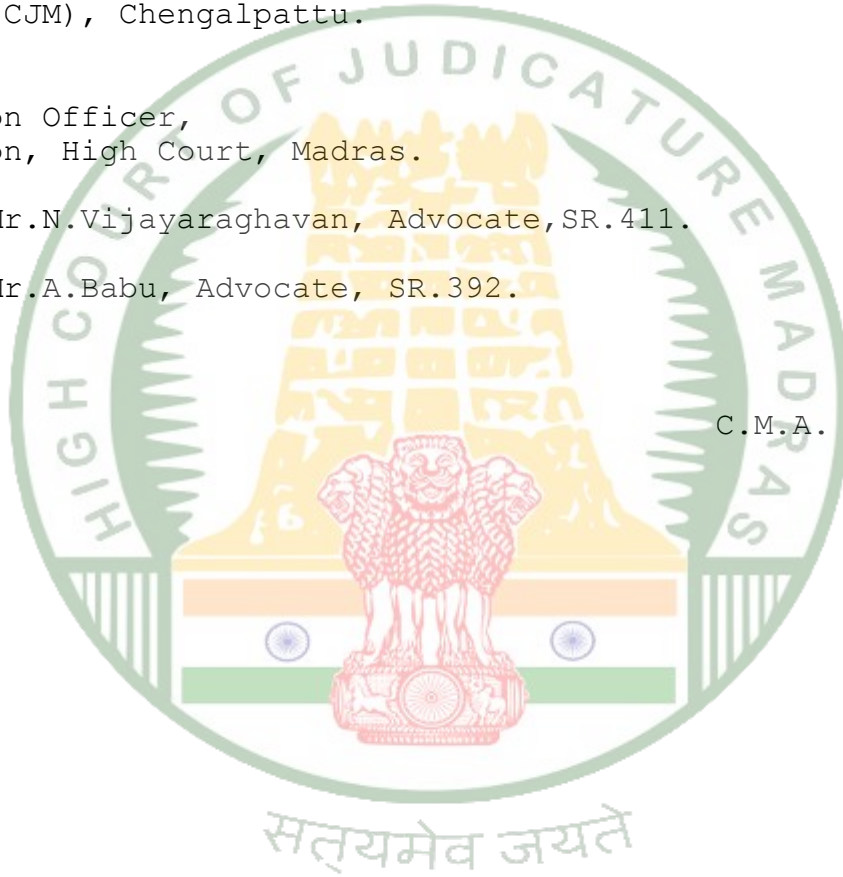
Copy to:
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+1 cc to Mr.N.Vijayaraghavan, Advocate, SR.411.

+1 cc to Mr.A.Babu, Advocate, SR.392.

jsv(co)
krd 11/3

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