

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 582 of 2015

Minor Shalini
(Minor rep. By her father
Settu)

..Appellant/Petitioner

Vs.

1. Kumar

2. The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Katpadi Road,
Vellore.

..Respondents/Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 13.03.2014 passed in MACT O.P. No. 305 of 2013 by the Motor Accidents Claims Tribunal (Special Sub Court), Thiruvannamalai.

For Appellant :: Mr.F. Terry Chellaraja

For Respondents :: Mr.A. Dhiraviyanathan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the minor claimant aggrieved over the award of Rs.1 lakh granted by the Motor Accidents Claims Tribunal (Special Sub Court), Thiruvannamalai, for the injuries sustained by her in the accident, which occurred on 04.01.2003.

2. Heard Mr.F. Terry Chellaraja, learned counsel for the appellant and Mr. A. Dhiraviyanathan, learned counsel for the 2nd respondent.

3. It is contended by the learned counsel for the appellant that though the appellant sustained fracture on her left shoulder, resulting in permanent disability to an extent of 25%, the Tribunal awarded only a sum of Rs.50,000/- towards "Permanent Disability", which is contrary to the judgment of the Honourable Apex

Court rendered in Kumari Kiran V. Sajjan Singh reported in 2014 2 TN MAC 553(SC). Therefore, he seeks enhancement of the award amount.

4. However, the learned counsel for the 2nd respondent Insurance Company would contend that the nature of injury is not capable of rendering the claimant disabled to the extent of 25%. According to him, the disability sustained by the claimant is exaggerated and therefore, he supports the award passed by the Tribunal.

5. A perusal of the award would show that the appellant sustained fracture on her left shoulder and based on P.W.2's evidence, Ex-P4, Disability Certificate and other medical records, the Tribunal determined the disability at 25%, in the absence of any rebuttal evidence on the side of the Insurance Company. Therefore, the said determination cannot be found fault with and the same is confirmed.

6. With regard to the injury sustained by the appellant, it would not be out of context, to refer to the judgment of the Honourable Apex Court, rendered in Master Mallikarjun V. Divisional Manager, National Insurance Company Limited, reported in 2013 2 TN MAC 338(SC), wherein the Apex Court has elaborately dealt with the matter and the relevant portion of paragraph No. 12 of the said judgment is usefully extracted as follows:

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all otherheads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick....."

From the above, it is clear that in case of children suffering from disability, above 10% and upto 30%, to the whole body, a sum of Rs.3 lakhs should be awarded, apart from other amounts under other heads. The ratio laid down in the above judgment was subsequently followed by another Division Bench of the Honourable Apex Court in Kumari Kiran V. Sajjan Singh reported in 2013 2 TN MAC 553(SC). In the light of the aforesaid judgment, since the appellant herein sustained 25% disability, she has to be awarded a sum of Rs.3 lakhs.

As far as other amounts are concerned, namely, Rs.20,000/- towards "Pain and Suffering", Rs.10,000/- towards "Extra Nourishment", Rs.5000/- towards "Transportation Expenses", another sum of Rs.5000/- towards "Attendant Charges" and Rs.10,000/- towards "Medical Expenses" are reasonable and hence, confirmed. In view of the award of Rs.3 lakhs towards "Permanent Disability", the sum of Rs.50,000/- awarded by the Tribunal under the said head stands deleted. Totally, a sum of Rs.3,50,000/- is awarded as compensation together with interest @ 7.5% per annum.

7. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the entire amount, within a period of one week thereafter, as it is submitted that she has already attained majority. The appellant shall pay additional court-fee for the enhanced compensation amount, if any, before this Court, within two weeks from the date of receipt of a copy of this order.

8. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced to Rs.3,50,000/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv
To
The Special Subordinate Judge,
MACT
Thiruvannamalai.

Copy to: The Sub Assistant Registrar,
A.E. Section, High Court, Madras (for Watching Court fee payment)

1 cc to Mr.M.Malar ,Advocate, SR.No.17468
1 cc to Mr.A.Dhiraviyanathan ,Advocate, SR.No.17447

C.M.A. No. 582 of 2015

kv (co) pmk.20.5.2015