

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.905 of 2015

Minor Ajith

Rep. by guardian Father P.Velu

... Appellant/Claimant

vs.

1.M.Palanivel

2.The Divisional Manager,
IFFCO TOKIO General Insurance Company Limited
Tulsi Chambers, 2nd Floor,
195, T.V.Swamy Road,
West R.S.Puram,
Coimbatore - 641 002.
(R1-Exparte in lower Court)

... Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 (1) of Motor Vehicles Act against the judgment and decree dated 09.09.2014 made in MCOP No.348 of 2008 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Namakkal.

For Appellant : Ms.Jeenath Begum for
M/s.T.Murugamanickam

For Respondents 2: Mrs.Harini for
(for R2) M/s.N.Vijayaraghavan

JUDGMENT

The appeal has been preferred by the claimant against the award of Rs.1,22,795/- awarded by the tribunal as compensation for the injuries sustained by him in the accident occurred on 15.09.2007.

2. Heard Mrs.Jeenath Begum, learned counsel appearing for the appellant/claimant and Mrs.Harini, learned counsel appearing for the second respondent/insurance company.

3. It is evident from the records that the claimant was aged about 5 years old at the time of accident when the bus dashed against the claimant and in the impact there was a grievous injuries in the head as well in the eyes. He originally took first aid from Dr.Sivashanmugam and later he was shifted to Aravinth Hospital, Namakkal. Because of the injuries in the eye, the vision of the claimant is affected. Moreover, he is unable to study properly due

to the injuries and resultant pain and sufferings. PW2 and PW3 doctors determined the disability at 30% based on medical records, namely Exs.P2, P7, P8, P10, etc. Based on PW2 & PW3 doctors' evidence and on considering the injury in the left eye and also injury in the head, the tribunal determined the disability at 30% and awarded a sum of Rs.90,000/- towards disability. However, the Hon'ble Supreme Court in Master Mallikarjun V. Divisional Manager, National Insurance Company Limited reported in 2013 2 TN MAC 338 (SC), has awarded a sum of Rs.3,00,000/- as compensation for a child who sustained disability from 10 to 30%. The said judgment was also followed by the Apex Court in Kumari Kiran V. Sajjan Singh and another reported in 2014 ACJ 2550. Therefore for 30% disability, this Court awards a sum of Rs.3,00,000/- as compensation. Only a sum of Rs.5,000/- was awarded towards transportation.

4. Taking into consideration the victim was hospitalised for 15 days, this court awards a sum of Rs.10,000/- towards transportation. Rs.17,995/- awarded towards medical expenses based on Ex.P8 bills is confirmed. Similarly, Rs.10,000/- awarded towards pain & sufferings is too low as the pain & sufferings and mental agony undergone by the five year old child when he was hit by a motor cycle would be more. Therefore, the same is enhanced to Rs.50,000/-. No amount was awarded towards attender charges. Therefore a sum of Rs.10,000/- is awarded under this head. Similarly, no amount was awarded towards loss of amenities as well as mental agony to the parents which is required as the parents would have suffered mental agony seeing the child suffering due to the injuries sustained by the child in the accident. Therefore, a sum of Rs.25,000/- each is awarded under this head. Thus, the award of Rs.1,22,795/- is hereby enhanced to Rs.4,37,795/-, rounded off to Rs.4,40,000/-, break-up as follows -

(1) Disability	...	Rs. 3,00,000/-
(2) Transportation	...	Rs. 10,000/-
(3) Medical expenses		Rs. 17,795/-
(4) Pain & Sufferings		Rs. 50,000/-
(5) Attender charges		Rs. 10,000/-
(6) Mental Agony to the parents (@ Rs.25000/- each)		Rs. 50,000/-

Total Rs. 4,37,795/-

Rounded off to Rs.4,40,000/-.

The rate of interest awarded by the tribunal @ 7.5% per annum shall remain unaltered.

5. The tribunal, taking into consideration, the lack of driving licence on the part of the rider of the two wheeler, rightly

exonerated the insurance company and directed the second respondent/insurance company to pay and recover the compensation from the owner of the vehicle. The said finding as well as the direction given by the tribunal is based on evidence and the same is confirmed.

6. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.1,22,795/-to Rs.4,40,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs.

7. The 2nd respondent/insurance company is directed to deposit the entire compensation awarded by this Court alongwith interest and costs, within a period of four weeks from the date of receipt of a copy of this order. The tribunal is directed to deposit the entire award amount alongwith interest and costs, in any one of the Nationalised Bank, under interest bearing fixed deposit, till the minor attains majority. The second respondent/insurance company is permitted to recover the said amount of compensation from the owner of the vehicle insured with them.

8. The learned counsel for the appellant/claimant is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

Copy to:
The Sub Assistant Registrar
A.E.Section, High Court, Madras.

+1 cc to Mr.T.Murugamanickam, Advocate,SR.29912

+1 cc to Mr.N.Vijayaraghavan, Advocate,SR.30204.

Kg(co)
krd 15/7

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