

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.3513 of 2011

Niyamathulla @ Shaik Khaffar
rep. by his father and next friend Yamin ... Appellant/Petitioner

Vs.

1. Karunanidhi
R- 1 remained ex parte before the Lower Court.
2. National Insurance Company Ltd.,
No.110, Jawarharlal Nehru Street,
II Floor, Pondicherry - 605 001.
... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed against the judgment and decree, dated 31.03.2009, passed in M.A.C.T.O.P.No.1115 of 2006, on the file of the Motor Accidents Claims Tribunal, (V Small Causes Court) Chennai.

For Appellant : Mr.Munusamy for
for M/s.C. and K Law Firm

For Respondent-2 : Mr.J.Chandran

JUDGEMENT

The injured/claimant is the appellant herein. The present Appeal is filed for enhancement of compensation of Rs.2,19,000/- awarded against the total claim of Rs.5,00,000/-.

2. The claimant, erstwhile minor, in his Claim Statement, stated that, due to the accident, he sustained injuries on the

scalp, neck, clavicle, right hand, fracture on the right leg bone and multiple injuries all over the body, and was aided first at Ulundurpet Hospital, and thereafter, referred to JIPMER Hospital, Pondicherry, and was given treatment as in-patient from 01.10.2005 to 04.10.2005, and has been continuously under treatment, and, he is unable to do normal work as before due to the aforesaid injuries. The injured, in support of his case, examined his father as P.W.1, and one Barhathullah, who accompanied him at the time of the accident, as P.W.2, and the Doctors, who examined him for assessing his permanent disability and who examined to assess his physical and mental impairment as P.W.3 & P.W.4 and has produced Ex.A.1/Accident Register, Exs.A.2 and 3/Discharge summaries, Exs.A.4 & 5/Prescriptions and Medical bills respectively, Ex.A.9, X-ray, Exs.A.11 & 12/Scan Reports, Exs.A.6, 10 and 13, Disability certificates and Ex.A.14/Guidelines for fixing the ratio of disability for various kinds of ailments.

3. The Tribunal, on the basis of oral and documentary evidence, arrived at the conclusion that the injured sustained 40% physical impairment, plus 60% mental impairment, totally 100% disability, and incurred medical expenses to the tune of Rs.14,000/-, -and he, being an young student under the physical support, awarded total compensation of Rs.2,19,000/- under different heads as follows:-

i.	Transport to Hospital	:	Rs. 10,000/-
ii.	Extra Nourishment	:	Rs. 15,000/-
iii.	Attender's charges	:	Rs. 15,000/-
iv.	Medical Expenses	:	Rs. 14,000/-
v.	Pain and Suffering	:	Rs. 25,000/-
vi.	Permanent disability	:	Rs.1,40,000/-
vii.	Loss of earning capacity	:	Nil

4. As already stated above, the injured has come forward with the present Appeal, claiming more compensation on the ground that the Tribunal erred in awarding too low and inadequate amount under the heads, referred to supra, and also erred in not awarding any reasonable compensation under other heads, viz., i) Mental agony to the petitioner, ii) Loss of earning power, iii) Loss of physical discomfort, iv) Loss of marriage prospects, v) Loss of amenities etc.,

5. Per contra, the learned counsel for the second respondent/Insurance Company would, by relying on the evidence

available, oppose the appellant's claim for enhancement of compensation, stating that the same suffers for want of proper medical evidence.

6. Heard the rival submissions made on both sides.

7. The injured was, at the time of the accident, admittedly a student. The Claim Petition was filed in the year, 2006 and disposed of by the Tribunal, in the year 2009, and the medical evidence produced herein by the claimant would support his case regarding the nature of injuries sustained by him, duration of treatment, and medical expenditure incurred towards treatment. The major heads, under which, enhancement of compensation sought for, is towards loss of earning power. Though nothing has been stated in the Claim Petition in this regard, P.W.1, the father of the injured, in the witness box deposed that, after the accident, his son discontinued his studies, and he is unable to speak, run, climb the stairs, and there is loss of memory, and he is also not able to use Indian toilet and is always in need of attender. The same is corroborated by P.W.2, who accompanied the injured at the time of the accident.

8. However, P.W.3/Doctor, in his Ex.P.10/Disability Certificate issued by him, assessed the permanent physical disability at 40%, P.W.4, another Doctor, has, in his Ex.P.13/Disability Certificate assessed the mental impairment at 60% and the same is also accepted by the Tribunal, and no case is made out on the side of the Insurance Company to disagree with the same.

9. Nevertheless, this Court is of the view that the physical disability of the injured cannot be equated to the functional disability of the whole body, which is the criteria for determining the Loss of earning power and Loss of future earning. As, no evidence is produced to show that the injured discontinued his studies, and unable to do anything on his own, and sitting idle at home, it cannot be presumed that the claimant lost his earning capacity totally, as such, he is entitled to get reasonable amount towards the Loss of future earning power. However, considering the fact that the injured herein is a student, his age, and nature of disability, the Tribunal ought to have awarded reasonable amount for the mental agony and loss of amenities. Accordingly, this Court is inclined to enhance the compensation in the following manner:-

i.	Loss of marital prospects	:	Rs.1,00,000/-
ii.	Transport to Hospital	:	Rs.10,000/-
iii.	Extra Nourishment	:	Rs.25,000/-
iv.	Loss of Amenities	:	Rs.1,00,000/-
v.	Attender's charges	:	Rs.15,000/-
vi.	Medical Expenses	:	Rs.15,000/-
vii.	Pain and Suffering	:	Rs.50,000/-
viii.	Permanent Disability	:	Rs.2,00,000/-
	Total	:	Rs.5,15,000/-

10. In toto, Rs.5,15,000/- is awarded as compensation to the claimant, and the same is payable with interest at the rate of 7.5% p.a. from the date of petition till date of deposit.

11. In the result, the compensation awarded by the Tribunal is enhanced from Rs.2,19,000/- to Rs.5,15,000/- with interest at 7.5% p.a. from the date of petition till date of payment. Time for deposit of the balance award amount is eight weeks from the date of receipt of a copy of this judgement. On such deposit into Court, the claimant is permitted to withdraw entire amount by filing necessary Cheque Petition before the Tribunal, but, before doing so, he shall pay appropriate Court fee on the enhanced amount of Rs.5,15,000/-.

12. This Civil Miscellaneous Appeal is accordingly ordered. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sd

To

Motor Accidents Claims Tribunal,
(V Small Causes Court) Chennai.

+1cc to Mr.C.Munusamy, Advocate, S.R.No.43138

C.M.A.No.3513 of 2011

CA(CO)
CA(30/10/2015)