

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:8.4.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.2274 of 2014
and
Cros.Obj.No.108 of 2014

The Divisional Manager,
New India Assurance Company Limited,
Casino Division, No.21, Pattulous Road,
Macmillan House,
Chennai-2.

...Appellant/R2/
1st Respondent in Cros.Obj.No.108 of 2014

-Versus-

1. Minor Munnaab rep. by his father Ibrahim as
Natural Guardian and next friend to the minor respondent
M.M.Ali Nagar, Vilambur, Cheyyur Taluk,
Kancheepuram District.

2. V.Girish ...Respondents/Claimants & R1
Cross Objector & 2nd Respondent
in Cros.Obj.No.108 of 2014

This civil Miscellaneous appeal is filed under Section 173 of
the Motor Vehicles Act, against the judgment and decree in
M.C.O.P.No.1343 of 2007 dated 3.1.2014 on the file of Small Causes
Court No.V, Chennai.

For Appellant : Mrs.S.R.Sumathy

For Respondents : Mr.V.Velu for R1

J U D G E M E N T

The appeal has been preferred by the insurance company against the award of the Tribunal Rs.3,41,000/- as compensation for the injuries sustained by the first respondent (minor) in the accident occurred on 20.12.2006.

2. Heard Mrs.S.R.Sumathy, learned counsel appearing for the appellant and Mr.V.Velu learned counsel appearing for the first respondent. Mrs.S.R.Sumathy, learned counsel appearing for the appellant argued that the award of the Tribunal Rs.3,41,000/- as compensation is on the higher side. More over, the minor-claimant was admitted in the hospital only for 7 days and the determination of 45% disability is on the higher side. Therefore, the award of the Tribunal has to be reduced. However, the learned counsel appearing for the first respondent argued for enhancement of the award amount stating that the amount awarded by the Tribunal is on the lower side.

3. Heard the parties and perused the records. It is seen from the records that the minor claimant sustained fracture of shaft of left femur and fracture of shaft of right tibia. The claimant was treated as an in patient from 20.12.2006 to 27.12.2006 in the hospital. Closed reduction and both leg hip Spica application was done. Considering the nature of injuries based on PW2-Doctor's evidence, the Tribunal determined the disability at 45% even though PW2 Doctor deposed 50% disability. The evidence of PW2 would denote that because of the fracture there is a restriction in the movement of joint and the claimant is unable to fold his leg and walk for a long time. Based on Ex.P4, disability certificate and other documents, the Tribunal rightly determined the disability at 45%. Rs.2000/- per percentage of disability, the Tribunal awarded, Rs.2000 X 45 = Rs.90,000/- towards disability.

4. This Court is inclined to follow the judgement in Kishan Gopal and another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC), in which for the death of 10 year old boy, Rs.5,00,000/- was awarded taking the notional income for a minor at Rs.30,000/- per year, even though the second schedule speaks about Rs.15,000/- per year and applying 15-multiplier as per the age of the mother. Rs.50,000/- was also awarded towards the conventional heads in that case. Following the same, in this case, the notional income of the minor claimant is taken as Rs.30,000/- per year. As per the age of mother, multiplier-15 is applied and the loss of income would be 15 X Rs.30,000/- = Rs.4,50,000/-. Under the conventional heads a sum of Rs.50,000/- in toto is awarded along with interest at 9% per annum.

Thus the award amount of the Tribunal is enhanced from Rs.3,41,000/- to Rs.5,00,000/- along with interest at 9% per annum.

5. The appeal filed by the Insurance company is dismissed. No costs. Consequently the connected M.P.No.1 of 2014 is also dismissed. The Cross objection in Cros.Obj.No.108 of 2014 filed by the claimant is partly allowed enhancing the award amount from Rs.3,41,000/- to Rs.5,00,000/- along with 9% interest per annum. The appellant is directed to deposit the entire modified award amount along with interest within four weeks from the date of the receipt of a copy of the order. On such deposit, the Tribunal is directed to deposit the entire modified award amount along with interest and costs in an interest bearing fixed deposit in Indian Bank High Court Branch till the claimant is attained majority. The claimant is not entitled for interest for the period in which the claim petition was dismissed for default namely from 28.7.2011 to 7.11.2013.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Small Causes Court No.V,
Chennai.

2 CCs to Mrs.S.R.Sumathy, Advocate SR.No. 19801 & 19802

1 CC to Mr.V.Velu, Advocate SR.No. 19487

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C.M.A.No.2274 of 2014
and Cros.Obj.No.108 2014

KSJ (CO)
PSI (03.06.2015)