

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.2124 of 2008

and

M.P.No. 1 of 2008

The National Insurance Co. Ltd.,
Branch Office,
88-F, Bypass Road,
Dharmapuri-636 701.

... Appellant/2nd Respondent

Vs.

1.Minor Sakthivel

Minor represented by his
next friend and father Perumal

2.K.Prabhakaran

... Respondents/Petitioner/
Ist Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and the judgment dated 21.12.2006 passed in M.A.C.T.O.P.No.19 of 2003 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Dharmapuri.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.S.Sathiyaseelan for R1

JUDGMENT

The claim petition was filed by the 1st respondent, who sustained injuries in the accident, which occurred on 24.12.2002, when he was hit by a two-wheeler, belonging to the 2nd respondent and insured with the appellant Insurance Company, while standing on the road.

2. The Tribunal, on contest, found that the accident occurred because of the rash and negligent driving of the two-wheeler and awarded a sum of Rs.2,18,590/-. The said award is being challenged by the Insurance Company on the question of quantum.

3. Heard Mr.S.Vadivel, learned counsel for the appellant and Mr.Sathiyaseelan, learned counsel for the 1st respondent.

4. The claimant, when he was four years old, was hit by a motorcycle and he sustained injuries in the spinal cord (L1) and eight lacerations. P.W.2, Doctor, determined the disability at 40%. Based on that, the Tribunal awarded Rs.90,000/- and Rs.53,597/- as per medical bills, rounded off to Rs.53,590/-, was awarded towards Medical expenses. A sum of Rs.2,000/- was awarded towards transportation; Rs.25,000/- was awarded towards future medical expenses; Rs.15,000/- was awarded towards loss of amenities; Rs.5,000/- was awarded towards extra nourishment; Rs.2,000/- was awarded towards miscellaneous expenses and in all, a sum of Rs.2,18,590/- was awarded as compensation along with interest at 7.5% p.a.

5. The learned counsel for the claimant relied upon a judgment of the Honourable Supreme Court in Master Mallikarjun Vs. Divisional Manager, the National Insurance Company Ltd., and another in Civil Appeal No.7139 of 2013 dated 26.08.2013, submitted that a 12 years old child suffered 18% disability. The Tribunal awarded a sum of Rs.63,500/-. On appeal, the High Court enhanced to Rs.1,09,500/-. On further appeal to Supreme Court by the claimant, the Honourable Supreme Court awarded a sum of Rs.3,75,000/- and paragraph No.12 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 other heads 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 Rs.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:

Head	Compensation amount
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-

Head	Compensation amount
Discomfort, inconvenience and loss of earning to the parents during the period of hospitalization	Rs.25,000/-
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	Rs.25,000/-
Total	Rs.3,75,000/-

In this case, the claimant was 4 years old, when he was hit by the motorcycle and sustained injuries to the spinal cord (L1). The medical records produced before this Court especially the discharge summary issued by ST.John's Medical College Hospital, Bangalore dated 16.01.2013 would show that the claimant sustained fracture of L(1) and L(2) with lateral dislocation with paraplegia. He was operated and plate with pedicle screw was fixed on L1, L2 and DC plating fixation was done. Further, since urination was not proper catheterisation was done to clear the frequent blockage of foleys catheter with debris. Even at the time of discharge of the claimants, CIC was advised for his urinary overflow, Therefore, not only the L1 and L2 was affected, but also the urinary system is also affected. The said area is very vital area. It is not only urine discharge area, but also meant for reproduction and for discharge of matrimonial obligations. Hence, the injury sustained by the claimant cannot be under estimated.

6. Therefore, following the judgment of the Honourable Supreme Court stated supra, on account of the permanent disability, if the minor sustained 30% disability to 60% disability, he is entitled to Rs.4 lakhs in addition to the actual expenditure for treatment and attendant charges. Accordingly, this Court awards a sum of Rs.4 lakhs towards disability. Rs.53,590/- was awarded by the Tribunal towards medical expenditure is confirmed. A sum of Rs.22,000/- is hereby awarded towards attendant charges. Totally, this Court awards a sum of Rs.4,75,590/- as compensation. Rounded off to Rs.4,75,000/-. Since the accident occurred in 2002, lending rate of the Bank is 9% and therefore, the interest at 7.5% p.a. awarded by the Tribunal is enhanced to 9% p.a.

7. Even though the appeal has been preferred by the Insurance Company, re-appreciating the evidence on record and applying the latest Supreme Court judgment to the facts of the case, this Court enhances the award from Rs.2,18,590/- to Rs.4,75,000/- along with interest at 9% p.a. even in the absence of appeal/cross

appeal by the claimants, invoking Order 41 Rule 33 of the Code of Civil Procedure to award just compensation.

8. In view of the above, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant is directed to deposit the entire amount along with interest and costs, after adjusting the amount if any already deposited, as per the modified award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to reinvest the said amount in any one of the Nationalised Banks in an interest bearing Fixed Deposit, initially for a period of three years and renewable periodically, till the 1st respondent attains majority. The guardian of the 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

Sd/-
Assistant Registrar (J)
Dated: 10.3.2015

*Corrected as per
letter dated 17.6.2015
and made herein.

Sd/
Assistant Registrar
Dated: 19.6.2015

//True Copy//

Sub Assistant Registrar

vsm

To

***The Motor Accident Claims Tribunal,
Court of the Subordinate Judge
Dharmapuri**

1 cc to Mr.S.Sathiyaseelan ,Advocate, SR.No.7854
1 cc to Mr.S.Vadivel ,Advocate, SR.No.7738

To be
substituted to
the order already
despatched on
31.3.2015

C.M.A.NO.2124 of 2008

ug(co)
pmk.16.3.2015
kk 22/6