

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM:

THE HON'BLE MRS.JUSTICE **S.VIMALA**

Civil Miscellaneous Appeal No.1812 of 2014

B.Jenifer (Minor)

Rep. By her father Basker

... Appellant

..Vs..

1. A.K.Ismail

2. The New India Assurance Company Limited,
No.45 Moore Street, Chennai 600 001

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 14.02.2014, passed in MCOP No.419 of 2007 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. S.Vijayakumar

For Respondents : No Appearance, for R-1,
Mr. R.Neethi Perumal, for R-2

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J U D G M E N T

The minor petitioner / appellant herein, B.Jenifer, represented by her father, made a claim for a sum of Rs.2,00,000/- in respect of the injuries sustained by her.

1.1. The appellant was a student, hardly aged seven years, at that point of time. Even though the claim is made for a sum of

Rs.2,00,000/- the claim is restricted to Rs.1,00,000/- for the purpose of payment of court fees and jurisdiction.

3. The Tribunal, which enquired into the matter, has awarded a sum of Rs.86,000/- and the breakup details are as under:-

Transport to Hospital	-	Rs. 3,000/-
Extra Nourishment	-	Rs. 7,000/-
Damage to clothing	-	Rs. 1,000/-
Medical Expenses	-	Rs. 5,000/-
Attender Charges	-	Rs. 5,000/-
Pain and Sufferings	-	Rs.15,000/-
Permanent disability	-	Rs.50,000/-

		Rs.86,000/-

4. The learned counsel appearing for the appellant would point out that as the appellant was aged only seven years at the time of accident, the pain and sufferings ought to have been adequately compensated and the amount awarded at Rs.15,000/-, on that head was grossly inadequate; a portion of evidence is also relied upon to support the contention that pain and sufferings should have been awarded on a higher side.

4.1. The details of injuries as described by the Tribunal would go to show that the appellant had been taking treatment as inpatient at Government General Hospital, from 27.04.2006 to 10.05.2006.

The appellant has suffered right frontal subdural hemorrhage, left side contusion and fracture of the skull; Suturing was done, POP was applied; AK cast has also been done.

4.2. These things have led to the disability of 40% to the appellant and it has been substantiated by the Certificate of the Doctor. Therefore, the pain and sufferings, at a time when the appellant will not be even in a position to describe the nature of pain, should have been awarded on a higher side. Hence, the amount awarded under the head pain and sufferings by the Tribunal is enhanced from Rs.15,000/- to Rs.45,000/-.

5. The learned counsel for the appellant would point out that because of the fracture of the skull bone in the frontal region, which is visible to a naked eye, there has been disfigurement in the face of the petitioner, which causes discomfort to appear in the Public and this is likely to cause humiliation and likely to affect the marriage prospects of the appellant also. Therefore, loss for disfigurement is estimated at Rs.30,000/-.

6. Coming to the disability of the appellant, even though the Doctor has assessed the disability at 40%, the Tribunal has chosen to award Rs.50,000/- on that head, without assigning any reasons.

There is no reason stated by the Tribunal as to why the evidence of the Doctor should not be accepted. Therefore, the disability compensation at the rate of Rs.2,000/- per percentage would be Rs.80,000/-.

7. Therefore, in total, there is an over all increase in compensation at Rs.90,000/-. Hence, the total amount of compensation is enhanced from Rs.86,000/- to Rs.1,76,000/-.

8. The learned counsel for the second respondent would point out that the amount of compensation has been restricted to Rs.1,00,000/- by the appellant, while filing the petition and therefore, the appellant is not entitled to ask for more than Rs.1,00,000/-.

8.1. This contention is very vague, as vagueness could be. It is mandatory on the part of the Court to award 'just compensation' and the amount of compensation need not be confined to amount claimed by the claimants, as they suffer from the injuries sustained, apart from illiteracy and ignorance. Therefore, this Court is justified in awarding just compensation, in addition to what is claimed.

9. In the result, this Appeal is partly allowed, enhancing the amount of compensation from Rs.80,000/- to Rs.1,76,000/-, payable

with interest at 7.5% per annum, from the date of petition till the date of payment. The second respondent shall deposit the entire award of compensation, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The dismissal period for which interest, if any, has been waived (by the claimant) shall be taken into consideration by the second respondent, at the time of depositing the amount. The award amount shall be deposited in anyone of the National Banks, in a Fixed Deposit, till the appellant attains majority and the father of the appellant is entitled to withdraw the accrued interest, once in three months, directly from the Bank, under direct intimation to the Tribunal. No costs.

23.12.2016

Index : Yes / No
Web : Yes / No
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S.VIMALA, J.,

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To

1. Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras

C.M.A.No.1812 of 2014

23.12.2016

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