IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.3166 of 2013

G.Srikanth (Minor)
rep. By father & next friend G.Srinivasan
... Appellant/Petitioner

Vs.

1.S.Sunil Kumar
(was set exparte in the Trial Court)

2.United India Insurance Company Ltd.,
Motor Third Party Claims Office - HUB,
Silingi Buildings, Greams Road,
Chennai 600 006. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2013 made in MACTOP No.442 of 2011 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu

For 2nd Respondent : Mr.D.Baskar

J U D G M E N T
(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the claimant/appellant and the learned counsel appearing for the 2nd respondent/Insurance Company.

2. Aggrieved by the award of the Tribunal dated 10.07.2013 made in MACTOP.No.442 of 2011 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai, the injured minor claimant represented by his father has come up with this appeal seeking enhancement of compensation.

3. Brief facts of the case, leading to the filing of the claim petition before the Tribunal, would run thus:

On 08.01.2011, about 13.00 hours, when the minor G.Srikanth, aged 2 years, was standing opposite to Door No.3/2 on the southern side of Subburayan Street, Chennai-2, the 1st respondent, who drove his Eicher Load Van bearing Registration No.TN-05-C-8687 came from west to east direction in a rash and negligent manner on the extreme wrong side of the road and dashed against him. Alleging that the 1st respondent, driver of the Eicher Load Van is responsible for the accident and that the 2nd respondent/Insurance Company, with which the said vehicle is insured, is liable to compensate for the injuries sustained by him, the appellant/claimant, filed a claim petition through his father, seeking a sum of Rs.27,00,000/- as compensation.

4. On the side of the appellant/claimant, Mr.G.Srinivasan, father of the claimant, was examined as P.W.1; one Dr.Amarnath R Sowlee, was examined as P.W.2 and Exs.P-1 to P-7 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR in Cr.No.08/T3/2911, registered at Traffic Investigation
Ex.P-2	Copy of Rough Sketch
Ex.P-3	Discharge Summary (Govt. General Hospital)
Ex.P-4	Photos of the minor petitioner
Ex.P-5	C.D. of the petitioner
Ex.P-6	Disability Certificate
Ex.P-7	X-ray film

5. On the side of the 2nd respondent/Insurance Company, no witness was examined and no document was marked.

6. The Tribunal, taking note of the evidence of P.W.1 together with the documentary evidence vide Ex.P-1 - F.I.R. and Ex.P-2 – Rough Sketch, held that the accident occurred only due to the rash and negligent driving of the driver of the Eicher Loan Van and fixed the liability to compensate the claimant, on the 2nd respondent/Insurance Company. Taking into account the injuries sustained by the minor claimant and his disability, the Tribunal awarded a sum of Rs.3,78,500/- as compensation to the claimant payable with interest at 7.5% per annum from the date of filing the claim petition till the date of deposit. Break-up details of the award passed by the Tribunal would run thus:

Transportation	Rs.	1,000.00
Extra nourishment	Rs.	20,000.00

Transportation	Rs.	1,000.00
Damage to Clothes	Rs.	500.00
Mental agony and Loss of income to the family members, inability to participate in family, social functions, sports and games	Rs.	50,000.00
Loss of amenities of life and Loss of expectation of marital alliance	Rs.	50,000.00
Permanent disability Rs.4,500 x 12 x 15 x 20%	Rs.	1,62,000.00
Pain and Suffering	Rs.	75,000.00
Disability of 10% @ Rs.2000/- per disability	Rs.	20,000.00
Total compensation	Rs.	3,78,500.00

Being aggrieved by the said award, the claimant has come up with the present appeal, seeking enhancement.

7. Learned counsel for the appellant/claimant would contend that the Tribunal has erred in awarding only a sum of Rs.50,000/- towards Loss of Amenities and Loss of Expectation of Life, without considering the age of the minor claimant. He would further contend that the compensation awarded under other heads also is on the lower side and hence, would seek enhancement of compensation.

8. While so, the learned counsel appearing for the 2nd respondent/Insurance Company would contend that the compensation awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

9. Heard the submissions of the learned counsel on either side and perused the relevant material records.

10. Before we proceed to analyze the case on hand, it would be apt to recap the words of the Supreme court in the case of Master Mallikarjun v. National Insurance Co. Ltd., (2014) 14 SCC 396, wherein the Supreme Court held as under:

> "8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000 per

year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc."

11. Admittedly, the claimant was a minor at the time of accident. As per the abovesaid decision of the Supreme Court, no particular notional income can be arrived at, as the child cannot be equated to a non-earning person. However, the pain and suffering, frustration, deprivation of the pleasures of childhood are material factors, which need to be taken into account while arriving at the amount of compensation. The disability was fixed at 20% based on which the Tribunal using the multiplier method has arrived at a figure of Rs.1,62,000/-. The Supreme Court, in the judgment referred to above, has indicated that even where the permanent disability is 10%, the minimum compensation to be fixed is Rs.1,00,000/-. Adopting the same ratio, the permanent disability having been fixed at 20% and confirmed by the Tribunal, this Court awards a sum of Rs.2,00,000/- on the said head.

12. As has been held by the Apex Court, a child cannot be equated to that of a non-earning member to fix notional income. By the same stretch, loss of future prospects cannot also be quantified. However, the child, in its tender age would very much require future medical treatment to recoup himself for facing the challenges in today's world. Accordingly, it would be just and reasonable to award a sum of Rs.75,000/- towards "Future Medical Expenses".

13. Further, this Court feels that the compensation awarded under the heads of "Extra Nourishment", "Transportation Expenses" are on the lower side. Accordingly, this Court feels it just and appropriate to enhance the amount to Rs.25,000/-

towards "Transportation Expenses" and Rs.50,000/- towards "Extra Nourishment". Insofar as the amount awarded under the head "Pain & Suffering" is concerned, taking into account the loss which the child would face in terms of deprivation of its childhood pleasures, the pain which it has to endure in its early childhood, its future, etc., the frustration level that it would face, it would be just and appropriate to award a sum of Rs.1,50,000/- under the head "Pain and Suffering" and a sum of Rs.1,00,000/- under the head "Deprivation of childhood pleasures".

14. Similarly, the marital prospects of the child at an older age would definitely be an impediment, irrespective of any treatment that would be given to the child. As the child grows, its mental capacity to assimilate and analyse things around it would also increase, whereby the mental balance of the child would greatly stand affected when it faces the task of getting married. But for the accident, the child would have had a healthy and normal life. Keeping in mind the mental turbulence which the child would be facing in the years to come, this Court is of the considered opinion that a sum of Rs.1,00,000/- would be a just compensation to be awarded under the head of "Loss of Marital prospects". The above view of this Court is fortified by the decision of the Supreme Court in M.Gopalakrishnan vs. The United India Insurance Company Limited (Civil Appeal Nos.9203 to 9204 of 2013).

15. In fine, the appellant/claimant is entitled to a sum of Rs.7,00,000/- as compensation. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

Heads	Amount awarded by this Court
Permanent Disability at 20%	Rs. 2,00,000.00
Future Medical expenses	Rs. 75,000.00
Pain and Suffering	Rs. 1,50,000.00
Deprivation of childhood pleasures	Rs. 1,00,000.00
Loss of Marital prospects	Rs. 1,00,000.00
Transportation expenses	Rs. 25,000.00
Extra nourishment	Rs. 50,000.00
Total compensation	Rs. 7,00,000.00

16. It is made clear that if no amount is deposited by the 2nd respondent/Insurance Company, the Insurance Company is directed to deposit the entire compensation awarded by the

Tribunal including the enhanced compensation awarded by this Court, in toto, a sum of Rs.7,00,000/- (Rupees Seven Lakhs only), along with accrued interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit to the credit of M.C.O.P.No.442 of 2011 on the file of the Motor Accidents Claims Tribunal/II Court of Small Causes, Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment.

17. As the appellant herein is a minor, the award amount shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by the natural guardian of the minor appellant, once in three months, till the minor appellant attains majority. It is made clear that once the minor claimant attains majority, the award amount shall be paid to him by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

With the above modification and direction, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer
VR Section,
High Court, Madras

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.10325
+1cc to Mr.D.Baskar, Advocate, S.R.No.10368

C.M.A.No.3166 of 2013

UG(CO)
CA(28/03/2016)