

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.05.2017

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

CMA.No.1238 of 2017

Minor Selvakumar,
Rep by his father and natural guardian
Anandan,
No.7937, Kannagi Nagar,
Thoraipakkam,
Chennai 600 096

...Appellant/Claimant

Vs.

1. Bharathidasan
S/o.Karnan,
No.19, Mettu Street,
Ayanavaram,
Chennai 600 023
(R1 set exparte before the Tribunal)

2. The New India Assurance Co. Limited,
No.45, Moore Street,
Chennai - 1
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed to enhance the award against the judgment and decree dated 11.01.2010 passed in M.A.C.T.O.P.No.550/2007 on the file of the Motor Accident Claims Tribunal Ponneri.

For Appellant :: Mr.F.Terry Chellaraja

For Respondents:: Mr.G.Udhayashankar (for R2)

J U D G M E N T

It is shocking to note that for amputation of left leg above the knee of the minor appellant, the tribunal for 70% disability awarded only Rs.70,000/-. The determination shocks the conscience of this Court. The provisions of the Motor Vehicles Act are benevolent in nature. The aim of the Act itself is to console, comfort and compensate the victims of the road traffic accidents. However, the method adopted by the tribunal, is not only erroneous but also contrary to law.

2.This Civil Miscellaneous Appeal has been preferred by the victim against the award of Rs.2,06,000/- as compensation for the amputation of his left leg above the knee due to the injuries sustained by him in the accident which had occurred on 21.12.2006, when he was travelling as a pillion rider at Old Mahapalipuram Road, having been hit down by a van behind which was driven rashly and negligently.

3. Heard Mr.F.Terry Chellaraja, learned Counsel appearing for the appellant and Mr.G.Udhayashankar, learned Counsel appearing for the second respondent.

4. The Insurance Company has not preferred any appeal regarding the negligence determined by the Tribunal on the part of the driver of the van, which was insured with the second respondent Insurance Company. In any event, the Tribunal based on Ex.P1, FIR, evidence of eyewitness, PW2 and in the absence of any contra evidence on the side of the respondents, rightly determined the negligence on the part of the driver of the van. Therefore, the said finding cannot be interfered with.

5. The Tribunal has awarded compensation to the tune of Rs.2,06,000/- under the following heads:

Sl. No.	Heads	Compensation awarded (Rs.)
1.	Transportation Expenses	3,000/-
2.	Permanent Disability	70,000/-
3.	Extra Nourishment	4,000/-
4.	Medical Expenses	19,000/-
5.	Loss of Earning Capacity	1,00,000/-
6.	Pain and Sufferings	10,000/-

6.1. As far as the compensation awarded by the Tribunal is concerned, it is pertinent to note that the appellant was hardly 15 years old and studying in IX standard in Kumararaja Muthiah Higher Secondary School, Gandhi Nagar, Adyar, at the time of the accident. Due to the accident, the minor sustained injuries all over the body and his left leg got crushed and he suffered fracture of Tibia and Fibula (Grade III compound fracture). At first, he was taking treatment at Lifeline Multi Speciality Hospital, Perungudi and thereafter, he was admitted in Government Hospital as an in-patient from 21.12.2006 to 29.03.2007 and thereafter from 07.05.2007 to 10.05.2007 in Shri Lakshmi Multi Speciality Hospital, Chennai. In the hospital,

the petitioner's left leg was amputated below the knee and thereafter it was amputated above the knee. PW3, Doctor had spoken about 80% disability of the appellant. The disability certificate issued by the Government Institute of Rehabilitation Medicine Hospital, K.K.Nagar, Chennai 83, marked as Ex.P6 would also speak about 80% disability. However, the tribunal determined the disability at 70%. The reduction of percentage of disability by the Tribunal from 80% to 70%, in the absence of any contra medical evidence itself is unjustified and therefore this Court redetermines the disability as per PW3 Doctor's evidence at 80%.

6.2 The learned counsel for the appellant would submit that the Tribunal had wrongly awarded only Rs.70,000/-, as far as the compensation under "Permanent Disability" assessed at 70% is concerned. Further, according to him, it would be a functional disability to the extent of 100%, as he would not be in a position to do any work. In any event, this Court determines the disability as well as loss of income at 80% as per expert's evidence.

6.3. The appellant was a minor, at the time of accident and was studying IX standard. Merely because he is a minor, notional income which has been fixed by the policy makers while enacting the Motor Vehicles Act 1988, cannot be taken in view of the change in circumstances namely increase in inflation, depreciation of money value, purchase power and spending power. Therefore, this Court determines the monthly income notionally.

6.4 The Hon'ble Supreme Court in V.Mekala .. Vs.. M.Malathi an another reported in 2014 (2) TN MAC 6 determined the monthly income of a 16 year old girl student notionally at Rs.10,000/-, who sustained grievous injuries and became permanently disabled and also added 50% towards future prospects. Following the said judgment, this Court determines the monthly income of the claimant at Rs.15,000/- per month and adding 50% towards future prospects, the total monthly income would be (Rs.15,000/- (+) 50% (Rs.15,000/-) Rs.15,000/-.

6.5 The appropriate multiplier to be adopted for the age group between 15 years and 25 years, as per the Judgment of the Honourable Supreme Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 is '18' and therefore, multiplier '18' is applied.

6.6. Thus, taking the monthly income at Rs.10,000/-, by adding 50% towards future prospects and by applying multiplier 18 and fixing the disability at 80%, the amount of compensation under the head "Loss of Income due to disability" would be Rs.25,92,000/- (Rs.15,000 x 12 x 18 x 80/100). Therefore, the

award of compensation of Rs.70,000/- under the head "permanent disability" and Rs.1,00,000/- under the head "loss of earning capacity" by the Tribunal are set aside and instead, a sum of Rs.25,92,000/- is awarded under the head "loss of income due to disability".

7. The victim was aged 15 years and definitely, marital prospect of the boy is very plea. Nowadays, it is very difficult to get a suitable alliance even for a normal person. As far as the victim is concerned, with amputation of leg, no girl would come forward to marry a disabled person and therefore a sum of Rs.2,00,000/- is awarded towards "loss of marital prospects".

8. The victim was a school going student. The pain and suffering that he would have undergone at the time of accident and the shock he would have sustained cannot be estimated and therefore a sum of Rs.2,00,000/- is awarded towards "pain and sufferings."

9. Similarly, there is a social stigma attached to a disabled person and the amenities which he would have enjoyed, but for the amputation of his leg, have to be taken into consideration and therefore for "loss of amenities", a sum of Rs.2,00,000/- is awarded.

10. The Tribunal has awarded a sum of Rs. 4,000/- towards "Extra Nourishment" which is negligible and therefore a sum of Rs.25,000/- is awarded under this head.

11. A sum of Rs.3,000/- awarded by the Tribunal for transportation is enhanced to Rs.20,000/- as this Court is of the view that the amount so awarded is very meagre.

12. As far as the amount of Rs.19,000/- awarded under the head "Medical Expenses" is concerned, in view of marking of Ex-P7 medical bills, the said amount awarded under this head is confirmed.

13. From a perusal of the award of amounts under various heads, it is pertinent to note that no future medical expenses has been given. For the purpose of artificial limbs, the petitioner has to spend amount and the said artificial limbs is only usable for 6 to 7 years, which would cost about Rs.30,000/- to Rs.35,000/-. Therefore, in an endeavour to meet out the future medical expenses, a sum of Rs.1,00,000/- is granted under the head "future medical expenses".

Thus, the total compensation amount payable to the claimant comes to Rs.33,56,000/-.

14. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Since Rs.1,00,000/- is awarded towards "future medical expenses", it is made clear that the said amount would not fetch any interest and therefore, interest should be calculated only for Rs.33,56,000/-.

15. Though the appeal has been filed by the claimant claiming enhancement to the tune of Rs.2,94,000/-, this Court, on re-appreciating the evidence on record, applying the latest law and invoking Order XLI Rule 33 CPC and Section 151 CPC, has enhanced the payable to the claimant, in an endeavour to award just and reasonable compensation, in the light of the judgment of the Honourable Apex Court rendered in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). Since this Court has got power and jurisdiction to enhance the compensation amount and furthermore, an appeal is a continuation of the original proceedings, this Court is bound to re-appreciate the pleadings and evidence on record and award just compensation as contemplated under the Act. Hence, in an endeavour to do complete justice, the award of the Tribunal to the tune of Rs.2,06,000/- is enhanced to Rs.33,56,000/-.

16. The second respondent insurance company is directed to deposit the entire amount along with interest and costs after deducting the amount if any already deposited, within six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire amount to the account of the claimant by RTGS, after getting the bank account details from the claimant.

17. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.2,06,000/- to Rs.33,56,000/-. Since the award amount has been enhanced, the appellant has to pay additional court-fee within a period of three weeks from the date of receipt of a copy of this order. No costs.

18. The learned Judge who has dealt with the matter has shown utter disregard to the law and benevolent provisions of the Act. Being a Judge, that too, dealing with the fact of the road traffic accident victims, the Judicial Officer, would have to sit in the armchair of the victim and has to see or has to assess the pain and sufferings the victim would have undergone and the problems arising out of the disability and the loss of income. However, mechanically, the learned Judge without any humane approach, awarded only a sum of Rs.70,000/- for 80% disability sustained by the victim, whose leg was amputated twice, initially below the knee and second time above the knee. The approach of the learned Judge in passing the award shocks the conscience of the Court. Therefore, the matter is to be

placed before the Administrative Side of this Court for appropriate enquiry.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rg/sai

To

1. The Motor Accidents Claims Tribunal Judge,
Motor Accidents Claims Tribunal, Ponneri.
2. The Registrar General, High Court, Madras.
3. The Registrar (Judl), High Court, Madras.
4. The Assistant Registrar (Admin)
High Court, Madras-104.
5. The Section Officer,
'B' Section, High Court, Madras-104.
6. Minor Selvakumar,
Represented by its Father and Natural Guardian,
S/o.Anandan, No.7937, Kannagi Nagar,
Thuraipakkam, Chennai-600 096.

+lcc to Ms.M.Malar, Advocate, S.R.No.36647

+lcc to Mr.G.Udhayashankar, Advocate, S.R.No.36766

सत्यमेव जयते

C.M.A. No. 1238 of 2017

cs/04/06/18

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