

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2320 of 2017

M.Janakiraman (Minor)
represented by father &
next friend G.Manikandan ... Appellant/Petitioner

Versus

1. K.Senthil
2. United India Insurance Company Ltd.,
Motor Third Party Claims HUBS,
Silinghi Buildings,
No.134, Greams Road,
Chennai - 600 006 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.11.2016 made in MACT O.P. No.2435 of 2013 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swaminkannu

JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal.

2. The Claimant, Minor Janakiraman, aged 13 years, a student studying VII standard at Arumbakkam, met with an accident on 09.04.2013. He was treated as in-patient for one day at Soundarapandian Bone & Joint Hospital, Anna Nagar and thereafter, he took treatment only as outpatient. During the course of treatment, plastoparisis have been applied on the fracture. The Doctor has certified the disability to the extent of 30%. The observation made by the Doctor reads as under :-

Due to the accident, Mid shaft tibia (L) leg fracture and the treatment given as plaster of Paris (conservatively) and loser puthur and malunion (L) tibia mid 1/3 widening and thickening post traumatic stiffen

(L) knee. Difficulty to squat and sit cum legged because of soft tissue and stiffen. He has assessed 30%.

3. The Tribunal, relying on the decision of the Supreme Court in Master Mallikarjun versus Divisional Manager, National Insurance Co. Ltd. and another 2013 (2) TNMAC 338 (SC), wherein it has been held that children having no income, cannot be equated to earning person for fixing Notional income and that the compensation awarded should enable the child to overcome to some extent the inconvenience or discomfort arising out of disablement. In the same decision, it has been pointed out that approximate compensation under Non Pecuniary damages, in addition to actual expenses incurred for Treatment, Attendant etc. should be to the extent of Rs.3,00,000/- in respect of disability above 10% and upto 30%. On the basis of the ratio laid down above, the Tribunal quantified the compensation in a sum of Rs.3,00,000/- towards partial permanent disablement. Further, this is a case where, disablement has been assessed at 30% and amount under the head of permanent and partial disability alone has been awarded to the extent of Rs.3,00,000/-. The compensation awarded under various other heads are as follows :-

	Rs.
1. Transportation, nourishing food and miscellaneous expenditure	: 25,000.00
2. Medical Expenses	: 6,500.00
3. Attender charges	: 5,000.00
4. Partial and Permanent Disability	: 3,00,000.00
5. Damages for pain, suffering and trauma	: 50,000.00
6. Loss of amenities	: 20,000.00
Total	: 4,06,500.00

4. Though it is the grievance of the learned counsel for the appellant is that compensation for loss of earning capacity has not been considered by the claims Tribunal, considering the fact that the injured child was aged only 13 years, there is every possibility of bone getting strengthened as he grows up, the Tribunal considered the disablement alone at Rs.3,00,000/-. The injured being aged 13 years, there cannot be any separate award towards loss of earning because loss of earning does not arise at the age of 13. Further, there is no proof to show that the disablement suffered by the child would materially affect his earning capacity and that the disablement was to such an extent that the earning potential of the child would stand heavily curtailed. Under the said circumstances, this Court is of the

view that the award passed by the Tribunal is just and reasonable and no grounds have been made out to interfere with the award passed by the Tribunal.

5. For the reasons aforesaid, this appeal, being devoid of merits, is accordingly dismissed.

6. Learned counsel appearing for the appellant seeks the leave of this Court for preferring a Special Leave Petition before the Hon'ble Supreme Court to raise the question of notional income with respect to minor children, and also loss of earning capacity. Acceding to the said request, leave is granted as prayed for to enable the appellant to prefer an appeal.

7. The second respondent/Insurance Company is directed to deposit the award amount with interest at 7.5% p.a. from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of MCOP No.2435 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the Savings bank account of the claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1. II Judge, Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104. (2 Copies)

+1cc to Mr.M.Swaminkannu, Advocate, S.R.No.56491

CMA No.2320 of 2017

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cs/28/03/18