

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2340 of 2017

Minor.P.Gokul
rep.by his natural guardian
and father D.Parthiban Appellant/Petitioner

Vs.

1. S.Rafi
2. The Oriental Insurance Co.Ltd.,
Rep.by its Divisional Manager,
Vellore. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.342 of 2002, dated 19.01.2005, on the file of Motor Accident Claims Judge, Sub Judge (In-charge), Gudiyatham, Vellore District.

For Appellant : Mr.Leninbalu

For Respondent : Mr.N.Sampath for R-2

J U D G M E N T

The claimant has filed this appeal seeking enhancement of compensation, which was awarded at Rs.1,76,000/-, as against the claim made for a sum of Rs.8,00,000/-.

2. The claimant, Gokul, who was a minor at the time of accident, represented by his father D.Parthiban, was a student of 6th standard. The appellant/claimant suffered grievous injuries in the accident, that happened on 4.6.02. The lorry, belonging to the 1st respondent, driven by its driver, in a rash and negligent manner, hit against the cycle in which the claimant was travelling. Due to the said accident, the right leg of the claimant was amputated. Therefore, the claimant filed a petition claiming a sum of Rs.8,00,000/-. The claim was contested by the respondents on the ground that the driver of the lorry was not in possession of a valid driving license and,

therefore, the insurance company is not liable to pay the compensation.

3. The Tribunal, on considering the materials, oral and documentary, awarded compensation in a sum of Rs.1,76,000/-, the break-up of which is as hereunder :-

Pain and sufferings	-	Rs. 15,000/-
Extra nourishment	-	Rs. 10,000/-
Damages for cycle	-	Rs. 1,000/-
Disablement compensation For 70% disablement	-	Rs. 70,000/-
Loss of educational facilities-		Rs. 50,000/-
Medical expenses along with driver expenses	-	Rs. 30,000/-
Total		Rs.1,76,000/-

4. It is the contention of the learned counsel for the appellant/claimant that a young boy with lot of hopes for the future, his life has been shattered in a moment due to the rash and negligent act, due to which he has is put to a perennial suffering by having his leg amputated. The gravity of the shock and mental agony suffered by the claimant has not been appreciated in proper light by the Tribunal. The Tribunal ought to have been adopted the multiplier method of quantification in order to assess the loss of earning capacity, but has wrongfully adopted the percentage method, which is unacceptable and unreasonable. It is also pointed out that the loss of enjoyment of amenities has not been considered and under many of the heads, the compensation awarded is very meagre, therefore, the award needs to be enhanced and the claim made by the claimant needs to be allowed.

5. The learned counsel for the appellant placed reliance on the following decisions of this Court and prayed this Court for enhancement of compensation :-

- i) Dhanalakshmi - Vs - R.Panneer selvam & Anr.
- ii) R.Venkatesan - Vs - V.Jaganathan & Ors.
(CMA No.695/2009 dated 27.11.2013)
- iii) Tamil Nadu State Transport Corporation -
Vs - vs. Minor Manikandan
- iv) New India Assurance Company Ltd. - Vs -
K.Kartheeswaran & Anr.

6. The learned counsel appearing for the 2nd respondent submitted that the accident had taken place in the year 2002 and the liability of the insurance company to pay the amount with interest for decades together has to be taken note of. It is further contended that while assessing the income of the claimant, this Court should also look into the fact that presently the claimant is a student and only the future earnings of the claimant should be taken into consideration, which should form the basis of arriving at a reasonable compensation.

7. Heard the rival contentions advanced by both sides and also perused the decisions relied on by the learned counsel for the appellant and the documents placed in the typed set of documents.

8. The learned counsel for the appellant, by relying upon the decision of this Court reported in the Venkatesan's case (supra) submitted that in a case of a student aged 16, who suffered amputation of leg above knee, this Court has enhanced the award of compensation passed by the claims Tribunal from Rs.2,85,670/- to 14,94,170/-.

9. In the above decision, fixing the monthly income at Rs.4,000/- and adopting a multiplier of 18, the loss of income was quantified at Rs.8,64,000/- and compensation has been quantified for pain and sufferings at Rs.1,00,000/-, loss of enjoyment of amenities at Rs.2,00,000/-, Transport expenses at Rs.20,000/-, extra nourishment at Rs.15,000/-, loss of articles at Rs.1,000/-, purchase of articles callipers at Rs.2,00,000/-. Accordingly, the above amounts have been awarded under the various heads as narrated above.

10. In the case on hand, the claimant was a student of 6th standard, which goes to show that the claimant was aged around 10 years on the date when the calamity in the form of accident stuck in his life. At the tender age of 10, the claimant had to undergo an operation and have his legs amputated, thereby rendering him crippled throughout his life, which the young boy would not even have dreamt of. No amount could compensate the loss sustained by the claimant at the very tender age. The Tribunal, for reasons best known to it, has quantified compensation under the heads mentioned above, which shocks the conscience of this Court. The quantification of compensation under various heads, to be more blunt, is rather on the very low side. The Tribunal has not considered the age and plight of the claimant and the scar that the accident would have left in his otherwise normal and peaceful life. If not for the accident, the claimant would have grown up, though not to be a very high profile and successful person, but atleast to be a person of

nominal potential. In such circumstances, the Tribunal ought to have adopted a realistic yardstick in arriving at the quantification of compensation commensurate with the day-to-day living condition of the common man.

11. The doctor, who operated on the claimant, whereby the leg of the claimant was amputated, has been examined as P.W.2, who has also issued Ex.P-5, wound certificate and Ex.P-7, disability certificate, assessing the disability at 70%. The medical records also conclusively prove that the right leg of the claimant has been amputated and that the disability is 70% as assessed by the Doctor, P.W.2. No evidence, contra to the above has been adduced on behalf of the respondents. Further, the medical bills have been filed in support of the case of the claimants as also the other expenses incurred for treating the claimant, all of which fall under the pecuniary damages.

12. The Tribunal has fixed the disablement compensation for 70% disability at Rs.70,000/=. In effect, it has adopted the test of Rs.1,000/= per percentage of disability and awarded a sum of Rs.70,000/= under the said head. The Tribunal has totally lost sight of the fact that the claimant is a young boy, aged around 10 years, who has a career ahead. The Supreme Court has, time and again, held that the age of the claimant is a determinative factor in fixing the compensation for disablement.

13. The Supreme Court in Kumari Kiran v. Sajjan Singh (2015 (1) SCC 539) has, in extenso, dealt with the plight of minors, who are victims of accident and the plight suffered by them in their lives after the accident and the trauma and mental stress to which they are put to. The Supreme Court, in the said context, held as under :-

"10. It is stated that the appellant minors were just 10 and 15 years old at the time of the accident. They have undergone immense physical pain and suffering as well as mental shock and trauma at a very tender age. The trauma undergone by the appellant minors due to the motor accident could have a severe and long-lasting effect. The appellant minors and their parents will have to make arrangements to support their disability in the future. No amount of monetary benefit will compensate for the suffering and pain that the appellant minors have to endure to overcome the probable shackles of their disability in the future. The appellant father suffers from 30% permanent disability due to the shortening of his right leg by one inch after injuries sustained by them in the motor vehicle accident. Both the children are

suffering from permanent disability due to this motor vehicle accident. The appellant father has and continues to undergo loss, pain and suffering in many ways due to this accident. Therefore, when the question of compensation arises in the case of permanent disablement suffered by the appellants due to a motor accident, we refer to the principles laid down by this Court in R.D. Hattangadi v. Pest Control (India) (P) Ltd. [R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC (Cri) 250], wherein it was held as under:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate the two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Therefore, quantification of damages divided under different heads as mentioned in the above case must be very carefully observed by the courts while awarding compensation to the victims of motor vehicle accidents. It is extremely essential for the courts to consider the two main components of damages i.e. both pecuniary and non-pecuniary damages as per the

guidelines laid down by this Court in the above case so that the just and reasonable compensation is awarded to the injured.

11. Further, with respect to just compensation to be awarded to the victims of motor vehicle accidents, we refer to the decision of this Court in Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , wherein it was held as under:

"5. The provision of the Motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned."

Thus, the compensation should be reasonably sufficient so that it equips the victims to return to their normal life to the maximum possible extent. The Tribunal and the High Court have failed to show compassion to the appellant minors and appellant father by not examining the above relevant aspect of the case on hand and not following the guidelines as laid down by this Court to determine just and reasonable compensation in the cases referred to supra.

With regard to the appellant minors

12. With respect to compensation towards future loss of income due to permanent disability for appellant minors, we refer to Mallikarjun v.

National Insurance Co. Ltd. [Mallikarjun v. National Insurance Co. Ltd., (2014) 14 SCC 396 : (2015) 1 SCC (Cri) 372 : AIR 2014 SC 736] , wherein this Court held as under:

"7. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D. Hattangadi v. Pest Control (India) (P) Ltd.[R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC (Cri) 250] , while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life, like difficulty in running, participation in active sports, etc. damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc. have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come.

"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."

14. The Supreme Court has categorically held that appropriate and just compensation for disability should be awarded keeping in mind not only the present requirements, but also the future requirements. The pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy living should all be taken as contributory factors in fixing the damages, that a claimant of accident, more so a minor, aged 10 years, to be entitled to.

15. In the case on hand, the claimant, a minor, aged about 10 years, studying in 6th standard at the time of accident, due to the accident and the amputation thereof, and would have been left in a highly painful and frustrated stage and deprived of the normal life and pleasures associated with a person of normal health. The Tribunal, keeping all the above aspects in mind, should have determined a just, fair and reasonable compensation, on both pecuniary and non-pecuniary heads of damages. However, even a cursory glance at the award passed by the Tribunal clearly shows that none of the factors have been taken into consideration in fixing the just, fair and reasonable compensation.

16. In the backdrop of the above facts, all the ingredients set forth in the decision of the Supreme Court in Kumari Kiran's case (supra) stands squarely attracted. The decision in Venkatesan's case (supra), relied on by the learned counsel for the appellant, also applies in all fours to the matter on hand. Accordingly, keeping in mind the dicta laid down by the Supreme Court above, this Court, while fixing Rs.4,000/= per month as contribution to the family, adopting a multiplier of 18, quantifies the pecuniary loss at Rs.8,64,000/- (Rs.4000 X 12 X 18). Further, after proper assessment, proportionally enhances the compensation payable to the claimant under the following heads :-

Pain and sufferings	-	Rs. 1,00,000/-
Extra nourishment	-	Rs. 15,000/-
Loss of Articles	-	Rs. 1,000/-
Pecuniary Loss (For 70% disablement)	-	Rs. 8,64,000/-
Loss of enjoyment of amenities-		Rs. 2,00,000/-
Transport Expenses	-	Rs. 20,000/-

Cost of Attendant	-	Rs.	70,000/-
Medical expenses	-	Rs.	30,000/-
Purchase of Articles Callipers-		Rs.	2,00,000/-

Total		Rs.	15,00,000/-

17. For all the reasons stated above, this Court quantifies the compensation payable to the claimant at Rs.15,00,000/= under various heads, as detailed above which is payable with interest at 7.5% per annum from the date of claim petition till date of deposit.

18. In the result, this appeal is allowed enhancing the quantum of compensation from Rs.1,76,000/- to Rs.15,00,000/- which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. Consequently, connected Miscellaneous petition is closed. However, there shall be no order as to costs.

19. The 2nd respondent/Insurance Company is directed to deposit the entire award amount as quantified by this Court above, along with interest at 7.5% per annum, less the amount, if any, already deposited, to the credit of MCOP No.342 of 2002 on the file of the Motor Accident Claims Tribunal, Gudiyatham, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the Tribunal is directed to keep the entire amount in a fixed deposit, in any one of the Nationalised banks till the minor claimant attains majority. The interest accrued thereon on the said deposit shall be withdrawn by the guardian of the claimant directly from the bank. The Court fee for the enhanced compensation shall be paid by the claimant before obtaining the copy of the judgment. The claimant is not entitled to any interest for the default period.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

kv/GLN

To

1. The Motor Accident Claims Judge
Sub Judge Incharge,
Gudiyatham, Vellore District.

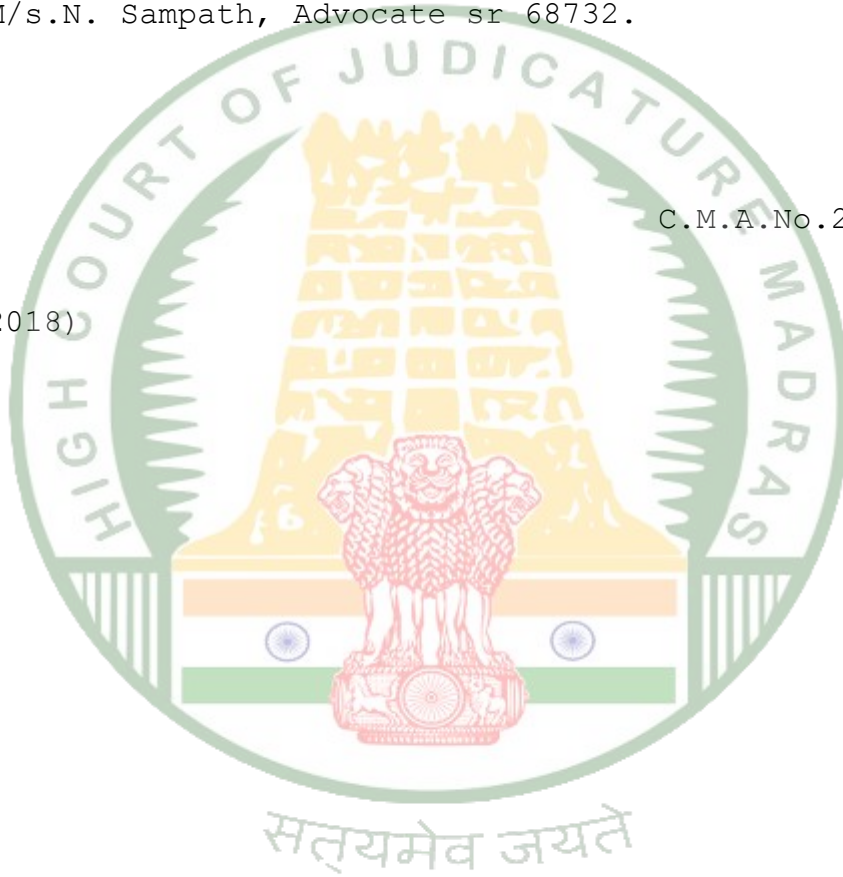
2. The Section Officer
V.R. Section, High Court,
Madras.(2 copies)

+1 CC to M/s. B. Leninbalu, Advocate sr 68833.

+1 CC to M/s.N. Sampath, Advocate sr 68732.

C.M.A.No.2340 of 2017

PPA(CO)
SP(12/01/2018)



WEB COPY