IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2346 of 2017

Minor Kalaiselvi @ Kausalya
Rep.by guardian and father, Sampath
... Appellant/Petitioner

..Vs..

1. K.Punithavathi

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
Big Street, Tiruvannamalai,
Tiruvannamalai District ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 30.11.2012, made in MCOP No.248 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mr. P.Mani

For Respondents : Mr. G.Udhayashankar, for R-2
Exparte, R-1

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J U D G M E N T

Claiming compensation in respect of amputation of one leg, the minor Claimant, represented by father, has filed the claim petition claiming compensation of Rs.30,00,000/-. The Tribunal has passed an award for a sum of Rs.3,43,000/-. Challenging the same as inadequate, the claimant has filed this Appeal.

2. The injured Kalaiselvi @ Kausalya, aged 12, was a student at the time of accident, on 05.06.2011 and she suffered amputation of left leg, below knee level.

3. The Tribunal has relied upon the discharge summary wherein the factum of amputation has been mentioned. The percentage of disability has been stated to be 70% by the

Doctor. The Tribunal has given a finding that as the minor was a student at the time of accident, the contention regarding loss of earning capacity cannot be true. The Tribunal has awarded compensation under the following breakup details:-

Pain and sufferings	-	Rs. 50,000/-
For disablement disablement at @ Rs.2,000/- per percentage	-	Rs.1,40,000/-
Extra nourishment	-	Rs. 10,000/-
Cost of attendant	-	Rs. 4,000/-
Transport Expenses	-	Rs. 4,000/-
Loss of marital prospects	-	Rs. 75,000/-
Loss of enjoyment of amenities	-	Rs. 30,000/-
For purchase of artificial calipers	-	Rs. 30,000/-
		Rs.3,43,000/-

4. Assailing the quantum of compensation, the claimant has filed this Appeal. When the claimant has suffered 70% of the disablement even during minority and the development of the minor child and her ability to earn would get drastically reduced and therefore, the Tribunal is not right in awarding disablement compensation alone and that it should have awarded compensation on account of loss of earning capacity. This is the prime contention raised by the appellant.

5. The Tribunal should have adopted the multiplier method of quantification to assess the loss of earning capacity, in the light of the finding that the claimant has suffered 70% disablement. The finding by the Tribunal with regard to the loss of earning is unwarranted and the finding that because the injured was a student, there would be no loss of earning is incorrect. The student may not earn today and it does not mean he/she may not earn forever. The ability to study inpraesenti is the future ability to earn. When the claimant has suffered permanent disablement, which is likely to affect her improvement and development, then certainly it would be a challenge for the claimant to earn in future. The claim not only pertains to present loss and it also covers the future loss. Therefore, the Tribunal ought to have considered loss of future earnings on account of 70% disablement.

6. In order to appreciate the contentions raised, it is necessary to look into the legal position. So far as the loss of income is concerned, it need not necessarily be loss of past

income, but it reflects loss of possibility of future income also. When the injured is stated to be a student studying in the school, there is every possibility that she would earn in future. Considering the minimum income of Rs.6,500/- per month and adding 50% towards future prospective increase in income, the monthly earning is fixed at Rs.9,750/- (rounded off to Rs.10,000/-). Applying the multiplier of '15', as per the reported decision in Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. MANU/SC/0606/2009, the loss of dependency would be Rs.18,00,000/- (Rs.10,000/- x 12 x 15). Since she has suffered amputation, pain and sufferings is awarded at Rs.1,00,000/-.

7. So far as the purchase of artificial calipers is concerned, as the injured is a young girl and the purchase of calipers at one time may not be sufficient, as she grows the size of the leg will vary and naturally the calipers have to be changed. Therefore, towards purchase of artificial calipers, a sum of Rs.2,00,000/- is awarded. Since she is young and she has to live atleast for another fifty years without one leg, the loss of enjoyment of amenities is estimated at Rs.1,00,000/-. The marital prospects is literally nil and perhaps if compensation is awarded, she may get the chance of marrying and therefore, loss of marital prospects is estimated at Rs.1,00,000/-.

8. Towards cost of transportation, extra nourishment and cost of attendant, a consolidated sum of Rs.25,000/- each at the rate of Rs.75,000/- is awarded. Thus, the total amount of compensation is quantified at Rs.23,75,000/-, which is payable at 7.5% per annum, from the date of petition till the date of deposit.

9. The second respondent / Insurance Company shall deposit the entire amount of compensation, as determined by this Court, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, 50% of the award amount shall be kept in a Fixed Deposit, in anyone of the Nationalised Banks, initially for a period of ten years, and the interest accrued thereon shall be withdrawn by the appellant, (since she would have attained majority by now). The balance 50% of the award amount shall be transferred to the savings bank account of the appellant, through RTGS.

10. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The court fee for the enhanced compensation

amount shall be paid by the claimant before receiving the copy of this judgment. ***The appellant/claimant is not entitled to any interest for the default (condone delay) period of 524 days as ordered in Mp.NO.1/2014 in CMA.SR.NO.84006/2014.**

Sd/-
Assistant Registrar(CS VII)
10/04/2018

Corrected as per order
of the court dated 28.04.2017
sd\-
Assistant Registrar(CS IV)
28/04/2018

//True Copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer,
   Motor Accident Claims Tribunal,
   Chief Judicial Magistrate,
   Tiruvannamalai.

To be Substituted the order already despatched on 11/04/2018

+1cc to Mr.P.Mani, Advocate, S.R.No.63786
+1cc to Mr.G.Udhayashankar, Advocate, S.R.No.63958

C.M.A.No.2346 of 2017

SSD(CO)
CS/10/04/18
nr 28/04/2018