

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.09.2017
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.650 of 2017

S.Rubesh (Minor)
rep.by his father and next friend Sundar Raj
..... Appellant/Petitioner
Vs.

1.Gopinath
2. ICICI Lombard General Insurance Company Ltd.,
No.140, 2nd and 3rd Floor,
Nungambakkam High Road, Chennai-34.
..... Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.1129 of 2009, dated 20.11.2012, on the file of Motor Accident Claims Tribunal, II Judge Small Causes Court, Chennai.

For Appellant : Mr.R.S.Jain-LE-Sadamar for
M/s.Ramya V. Rao

For Respondent : Ms.R.Sreevidhya
No.2

J U D G M E N T

Minor, S.Rubesh, aged 11 years, met with an accident on 3.6.08. Therefore, in respect of injuries sustained by him, he filed a claim petition, through his father, claiming compensation in a sum of Rs.6,00,000/-.

2. The Tribunal, considering the oral and documentary evidence, has passed an award for a sum of Rs.4,08,000/- under the following break-up details:-

Transportation	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Damage to clothes	-	Rs. 1,000/-
Medical expenses	-	Rs.2,27,000/-
Attender charges, Mental agony to the petitioner and loss of amenities of life	-	Rs. 25,000/-
Pain and suffering	-	Rs. 25,000/-
Disability of 60% at the rate of Rs.2,000/- per disability	-	Rs.1,20,000/-

Total compensation is fixed at-		Rs.4,08,000/-

Challenging this award as inadequate, the claimant has filed this appeal.

3. The main contention raised by the learned counsel for the appellant is that the Tribunal should have applied the multiplier method of quantification to assess the loss of earning capacity and that, the award under the other heads are also inadequate and it requires proportionate enhancement. It is further contended that no amount was awarded towards the loss of expectation of life and the compensation awarded under the consolidated head of mental agony, loss of enjoyment of amenities and attender charges is on the lower side.

4. In order to appreciate the contentions raised, it is necessary to find out the details of the injury sustained and the impact of disablement upon the earning capacity of the claimant.

5. The Tribunal has considered Ex.P-5, medical bills and has awarded compensation of Rs.2,27,000/-. There is no quarrel over the quantum of compensation awarded under this head and, accordingly, the same is confirmed.

6. A perusal of the records reveal the claimant has been admitted in the hospital on 06.06.2008 and discharged on 10.06.2008. The injury is described as side swipe injury right elbow. The Doctor has assessed the disablement at 70%. According to the Doctor, there is shortening of hand to the extent of 1 inch, and there would be difficulty in lifting weighty objects and the claimant would not have grip over things and also to write.

7. To find out the nature and extent of injury and the consequent disablement suffered by the claimant, this Court summoned the claimant to appear before this Court. The claimant presented himself before this Court and it is visible even to the naked eye that the claimant cannot use his hand for any purpose whatsoever. It is also stated by the claimant, who was present in-person before the Tribunal, that it is not even possible for him to take food using his hand and somebody has to feed him. The doctor, who was present before the Court also submitted that psychological treatment is necessary for the claimant to lead a peaceful life.

8. Though the Doctor has assessed the disablement, on the basis of the injuries suffered by the claimant and the consequential difficulty in discharging his day-to-day work, however, the Tribunal has fixed the disablement only at 60%.

9. It is the contention of the learned counsel for the appellant that 70% of the physical disablement would definitely

result in loss of earning capacity at least to the extent of 30% and therefore multiplier method ought to have been adopted to quantify the compensation.

10. Learned counsel appearing for the insurance company also has no serious objection for adopting multiplier method for quantification. Accordingly, fixing the notional income of the claimant at Rs.5,000/- per month, based on the ratio laid down by the Supreme Court in a catena of decisions, and adopting multiplier of 18, the loss of earning in respect of 30% disablement comes to Rs.3,24,000/-.

11. Insofar as the compensation awarded under the other heads are concerned, this Court, keeping in mind the injuries sustained by the claimant, the period of treatment and the impact of the injuries on the life and day-to-day living of the claimant, is of the considered opinion that the compensation awarded under many of the heads require enhancement and restructuring. Accordingly, this Court, restructures the compensation under the various heads as hereunder :-

Transportation	-	Rs. 15,000/-
Extra nourishment	-	Rs. 20,000/-
Damage to clothes	-	Rs. 1,000/-
Loss of Enjoyment of Amenities	-	Rs. 40,000/-
Medical expenses	-	Rs.2,27,000/-
Pain & Sufferings	-	Rs. 50,000/-
Future Medical Expenses	-	Rs. 30,000/-
Attender charges	-	Rs. 25,000/-
Disability @ Rs.1,000/=		
for 60% disability	-	Rs. 60,000/-
Loss of earning capacity	-	Rs.3,24,000/-

Total compensation is fixed at-		Rs.7,92,000/-

12. For the reasons aforesaid, the civil miscellaneous appeal is allowed and the award is enhanced from 4,08,000/- to 7,92,000/-, which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous petition is closed, if any.

13. The second respondent / Insurance Company is directed to deposit the entire award amount along with interest at 7.5% p.a., less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the entire amount shall be in an interest bearing fixed deposit in any one of the Nationalised banks till proof of majority before the Tribunal. It is seen from the records that as on the date of accident, the claimant was aged about 11 years. By now, the claimant/appellant herein would have attained majority. The claimant is permitted to withdraw the

interest accrued on the fixed deposit directly from the bank on production of necessary documents showing his attainment of majority. The claimant/appellant shall pay the requisite additional court fee, if any, on the enhanced amount before obtaining a copy of this judgment.

kv/GLN

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

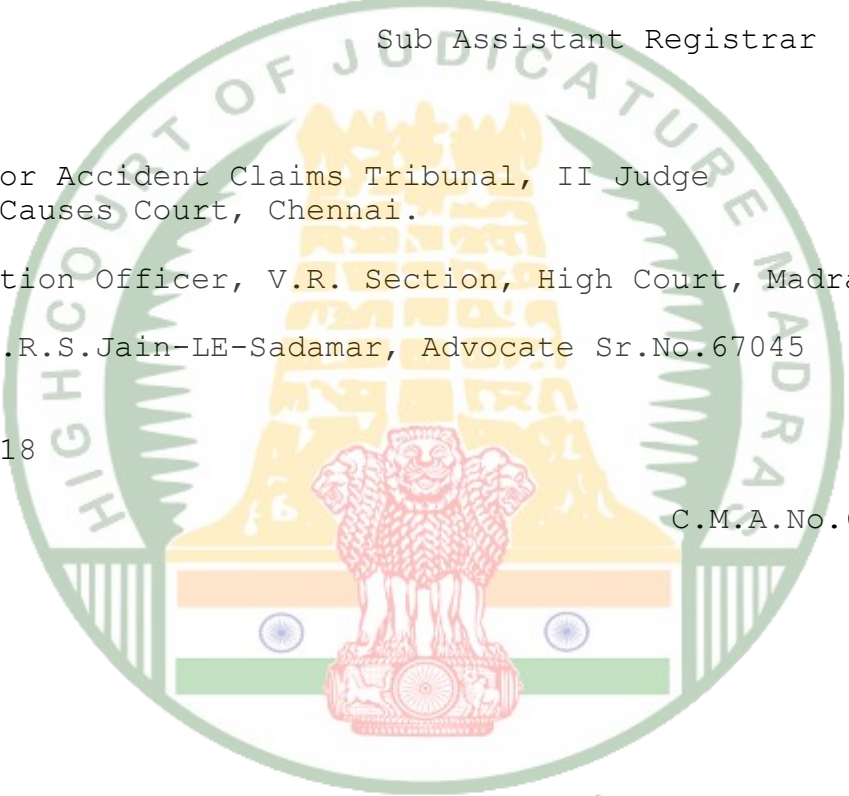
To

- 1.The Motor Accident Claims Tribunal, II Judge
Small Causes Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.R.S.Jain-LE-Sadamar, Advocate Sr.No.67045

CA(CO)
sm:10.7.2018

C.M.A.No.650 of 2017



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