

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.950 of 2017
and
C.M.P.No.4728 of 2017

Branch Manager,
M/s.New India Assurance Co. Ltd.,
No.13/46, K.G.Marg,
SCINDIA House Branch, 2nd Floor,
New Delhi - 110 001.

... Appellant

vs.

1. Minor Surya
[minor rep. by his N.F. & mother
Mrs.Anjali]

2. M/s.Kausar India Ltd.,
No.7th Mile Stone,
Gyani Border,
Shababad, Ghaziabad,
Uttar Pradesh - 201 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the Judgement and Decree in MCOP No.44 of 2014 dated 28.09.2015 on
the file of Motor Accident Claims Tribunal, [Subordinate Judge], Hosur.

For Appellant : Mr.J.Chandran

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

The only challenge in this appeal, is to the quantum of compensation awarded to a four years old minor boy, on the ground that the compensation of Rs.1,66,000/- awarded in a case of injury is highly excessive, exorbitant and unsustainable in law.

2. In the accident, which occurred on 14.05.2013, a 4 year old child and his mother sustained grievous injuries. For the injuries sustained, they made separate claim in MCOP Nos.43 and 44 of 2014, respectively, before the Motor Accident Claims Tribunal, [Subordinate Judge], Hosur.

3. As evidence adduced is common in both claims, they were tried together and a common award has been passed on 28.09.2015, whereby, the minor claimant/injured was awarded a sum of Rs.1,66,000/- as compensation, with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, as hereunder

Permanent disability	: Rs. 90,000/-
Pain & suffering	: Rs. 40,000/-
Medical expenses	: Rs. 9,000/-
Extra nourishment	: Rs. 10,000/-
Transport	: Rs. 5,000/-
Attender charges for life long	: <u>Rs. 12,000/-</u>

Total : Rs.1,66,000/-

4. Though, Mr.J.Chandran, learned counsel for the appellant Insurance company contended that the compensation awarded to the injuries, is on the higher side, we are not inclined to accept the same, for the reason that, perusal of the impugned award shows that the minor boy has sustained fracture in the left leg and other grievous injuries. Immediately after first aid in Government Hospital, Hosur, he was inpatient in Ashoka Hospital, Hosur. PW2, Dr.Gandhi, who examined the minor has deposed that due to accident, it is not possible for the minor boy to participate in sports and would find difficult to walk long distance, stand for long time and climb staircase. Though, he has assessed the disability at 40%, the tribunal taking into consideration that the injured was only 4 years old at the time of accident and there is possibility of union of fractured bones, has taken the disability as 30% and following the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. G.Ramesh, reported in 2013(2) TNMAC 583(SC)***, awarded Rs.90,000/- towards partial permanent disablement, i.e., at the rate of Rs.3,000/- per percentage of disability. Tribunal has applied, appropriate guidelines, to award disability compensation. Hence, the same is sustained.

5. Sum of Rs.40,000/- awarded under the head pain and sufferings appears to be reasonable. Similarly, compensation under other heads such as

extra nourishment, transportation and attender charges, is also reasonable. Award of Rs.9,000/- towards medical expenses, is supported by Exs.P9 & P15-Medical Bills. There is no award under the head conventional damages.

6. On the facts and circumstances of this case, we are of the view that the quantum of compensation awarded under various heads to a 4 years old minor boy, cannot be said to be on the higher side and the award is confirmed.

7. In view of the above discussion, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

8. Consequent to the dismissal of the appeal, the appellant-Insurance company, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim till deposit, to the credit of MCOP No.44 of 2014 dated 28.09.2015 on the file of Motor Accident Claims Tribunal, [Subordinate Judge], Hosur, within a period of four weeks from the date of receipt of a copy of this order.

9. On such deposit being made, the entire amount with interest, shall be in the bank deposit till the minor respondent/injured attains majority. The

interest accruing on the share of the minor shall be paid to the next friend and mother of the minor Mrs.Anjali, once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

[S.M.K., J.] [M.G.R.,J.]
09.03.2017

Index: Yes/No
Internet: Yes/No

ars

Note:

The Motor Accident Claims Tribunal,
[Subordinate Judge], Hosur, is directed
to affix the details of this order in the
notice board, mentioning the names of the
parties, MCOP and Appeal Numbers.

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

ars

C.M.A.No.950 of 2017
and
C.M.P.No.4728 of 2017

09.03.2017