



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.M.A.[MD].No.1001 of 2011
and
C.M.P.(MD).Nos.5716 of 2016

Minor Sivaprakash,
S/o.Mohanraj,
70D, 14 Siva Bawanam,
Fourth Sree Ram Nagar,
Kovilpatti, Now at Fourth Middle Street,
Thiyagaraja Nagar, Tirunelveli 11. : Appellant/Petitioner

Vs.

1. The Chairman,
C.K.T.Matric Higher Secondary School,
Kumaragiri, Kovilpatti,
Tuticorin District.
2. The Branch Manager,
New India Assurance Company Limited,
Kovilpatti, Tuticorin District. : Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.06.2011, made in M.C.O.P.No.5 of 2010, on the file of the Motor Accident Claims Tribunal, Tirunelveli, [Chief Judicial Magistrate], Tirunelveli.

For Appellant : Mr.S.Meenakshi Sundaram
For Respondent No.1 : No Appearance
For Respondent No.2 : Mr.J.S.Murali

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Tirunelveli, [Chief Judicial Magistrate], Tirunelveli, in M.C.O.P.No.5 of 2010, dated 03.06.2011, the present Civil Miscellaneous Appeal has been filed by the minor claimant, represented by his father, seeking enhancement of the



compensation.

2. The case of the claimant, as could be culled out from the Claim Petition, is that at the time of accident, he was aged about nine years, studying fourth standard in C.K.T.Matriculation Higher Secondary School, Kumaragiri. On 11.09.2009, at about 02.00 PM, the minor claimant tried to board into the school bus, bearing Registration No.TN-69-Y-6999, belonging to the first respondent herein, insured with the second respondent. While so, the said bus hit the minor claimant, due to which, the minor claimant sustained serious injuries. Immediately, the minor claimant was taken to the Government Hospital, Kovilpatti and thereafter, he was admitted in Madurai Institute of Orthopaedics and Traumatology Hospital, where he took treatment as an in-patient from 11.09.2009 to 28.09.2009 and thereafter, he took treatment as outpatient and his right leg was amputated. He also suffered a fracture on his left leg. The minor claimant made a claim before the Tribunal for a sum of Rs.25,00,000/- as compensation for the serious injuries sustained by him.

3. In order to prove the claim, on the side of the claimant, one witness was examined as PW-1 and 23 documents were marked as EX-P1 to EX-P23. On the side of the appellant - Insurance Company, no witnesses were examined. However, six documents were marked as EX-R1 to EX-R6. Having considered the above materials, the Tribunal has awarded a sum of Rs.7,06,130/-/- as compensation. However, since the first respondent school had already paid a sum of Rs.5,00,000/-, the second respondent was directed to pay the remaining amount of Rs.2,06,130/- together with interest at the rate of 7.5% per annum payable by the appellant - Insurance Company. As we have already pointed out, having not been satisfied with the award amount, the appellant/minor claimant has come up with the present Civil Miscellaneous Appeal.

4. We have heard the learned counsel appearing for the appellant/minor claimant and the learned counsel appearing for the Insurance Company and we have also perused the records carefully.

5. The main submission of the learned counsel for the appellant/minor claimant is that the minor claimant has suffered permanent disability to an extent of 81.66% and therefore, the amount awarded by the Tribunal is on the lower side. The learned counsel, in support of his contention, makes reliance upon the Judgment of the Hon'ble Supreme Court in **Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited**, reported in **2013 (2) TN MAC 338 (SC)**, wherein in respect of permanent disability above 60% and upto 90%, the Hon'ble Supreme Court has awarded a sum of Rs.5,00,000/-.

6. On the other hand, the learned counsel appearing for the Insurance Company submitted that the Tribunal, taking into consideration of all the relevant factors, has awarded a very



reasonable amount, which does not require any enhancement.

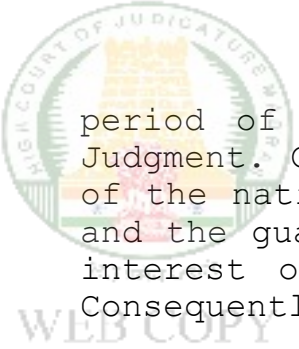
7. We have considered the above submissions.

8. As rightly contented by the learned counsel for the appellant/minor claimant, in respect of permanent disability, the Tribunal has awarded a very meagre amount of Rs.3,00,000/-, which, in our considered view, needs to be enhanced to Rs.5,00,000/-, as per the Judgment of the Hon'ble Supreme Court in **Master Mallikarjun's** case, cited supra. Similarly, the Tribunal has awarded only a sum of Rs.50,000/-, under the head of loss of amenities, which also needs to be enhanced, since the minor claimant would not be in a position to do his normal work for the rest of his life. Thus, in our considered view, awarding another sum of Rs.2,50,000/- would meet the ends of justice. Thus, under the head of loss of amenities, a sum of Rs.3,00,000/- has to be awarded. Now, turning to the amount awarded under the head of pain and sufferings, the Tribunal has awarded a sum of Rs.1,00,000/-. The said amount, in our considered view, requires enhancement, since at the time of accident, the minor claimant was aged about 9 years, undergoing fourth standard. For a child of this stature, he would have suffered a lot. Thus, awarding another sum of Rs.1,50,000/- would again meet the ends of justice. Accordingly, it is enhanced to Rs.2,50,000/-. The amounts awarded under the other heads are to be confirmed. Thus, the break-up details are as follows:-

Sl .N o.	Head	Amount granted by this Court
1	Transport expenses	Rs. 16,000/-
2	Medical expenses	Rs. 1,90,127/-
3	Extra Nourishment	Rs. 25,000/-
4	Medical Attendants	Rs. 25,000/-
5	Permanent Disability	Rs. 5,00,000/-
6	Pain and Sufferings	Rs. 2,50,000/-
7	Loss of Amenities	Rs. 3,00,000/-
	Total	Rs.13,06,127/-

Except the above modification, the findings rendered by the Tribunal, in all other aspects, are confirmed.

9. In the result, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal, dated 03.06.2011, made in M.C.O.P.No.5 of 2010, on the file of the Motor Accident Claims Tribunal, Tirunelveli, [Chief Judicial Magistrate], Tirunelveli, is ~~enhanced~~ and there shall be an award for a sum of Rs.13,06,127/-. The appellant - Insurance Company is directed to deposit the enhanced compensation at the rate of 7.5% per annum, within a



period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the amount shall be deposited in any one of the nationalized banks, till the minor claimant attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months directly from the bank. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal, Tirunelveli,
Chief Judicial Magistrate, Tirunelveli.

NB

TE/SV-MMS : 21/02/2017 : 4P/2C

JUDGMENT MADE IN
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