

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1070 of 2018

V.Aishwarya (Minor)

Rep. By her Mother and natural guardian

Mrs.V.Malathi

..Appellant/Petitioner

Vs

1.M.Karthik

2.National Insurance Company Limited

Sowcarpet Branch

No.378, Mint Street

Sowcarpet, Chennai-600 079

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 07.02.2018 made in M.C.O.P.No.1423 of 2013 respectively on the file of Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For appellant : : Mr.A.Abdhul Kani

For Respondents : : Mr.J.Chandran for R2

R1- Remained exparte before Tribunal

J U D G M E N T

The Appellant is the Petitioner and fled the above appeal challenging the order and decree dated 07.02.2018 made in M.C.O.P.No.1423 of 2013 respectively on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 27.04.2012 at about 11.30 a.m., as the injured minor petitioner was playing in front of her home situated in Sayanapuram Village, Arakkonam Taluk, the 1st respondent TATA SUMO Car bearing Reg.No.TN-22-W-9000 proceeding from Sathamangalam to Nemili Road, Vsayanapuram Village, Arakkonam Taluk, came at high speed, dashed against the minor petitioner causing her multiple grievous injuries. The accident occurred

due to negligence of the 1st respondent car driver only. The minor petitioner was aged 6 years, lost her right leg which was amputated. The Petitioner's future is totally affected and as such, seeks a sum of Rs.35,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contended that the accident does not occur in the manner alleged by the Petitioner. As the 1st respondent vehicle was driven by a driver Saravanan who did not possess driving licence, he was charge sheeted under Section 3 of the MV Act and he admitted the offence, paid fine thereof in C.C.No.274 of 2012 on the file of Judicial Magistrate Court, Arakkonam, on 19.02.2013. The vehicle involved in the accident did not possess valid registration certificate and payment of road tax was not done. The Petitioner suddenly emerged out of her home and ran across the road leading to the accident. The negligence of the minor petitioner alone caused the accident. The respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.16 to prove their claim. On the side of the respondents, 1st respondent was called absent and set exparte on 10.06.2013, on the side of the 2nd respondent, R.W.1 was examined and documents Ex.R.1 to Ex.R.3 was produced. The Tribunal, on careful analysis of evidence available on record, found negligence of the 1st respondent vehicle driver alone caused the accident, passed award for a sum of Rs.11,07,000/- payable by the respondents to the Petitioner.

5. Being not satisfied with the quantum of the award, the minor petitioner, Represented by her Mother, has come forward with the present appeal.

6. The learned counsel for the Petitioner/appellant contends that the Minor Petitioner/claimant suffered amputation on her right leg and also multiple fractures, causing 50% disability to her. The same was not taken into consideration by the tribunal. The Tribunal ought to have fixed the notional income at Rs.10,000/- per month and added future prospects. The Tribunal failed to provide for sufficient compensation at different heads. The Petitioner/claimant has sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident occurred only due to negligence of the minor petitioner and as such, the respondents are not liable to pay any compensation. The amount awarded by the Tribunal is on the higher side. The second respondent sought for dismissal of the appeal.

8. This appeal is quantum appeal. Both sides did not seriously contested the conclusion of the Tribunal in fixing negligence on the 1st respondent vehicle driver.

9. The Petitioner/claimant examined the mother of the minor as P.W.1 and she clearly stated that the accident occurred due to high speed in which the 1st respondent vehicle was driven and she produced copy of the FIR registered against the 1st respondent driver as Ex.P.1. The mother of the Petitioner who deposed as P.W.1 is the complainant before the Police. The respondent has not examined anyone to contradict the version of accident given by P.W.1. It is also evident from Ex.R.2 Investigation Report that the driver of the 1st respondent car did not possess valid driving licence. In Ex.P.2-Final Report filed by the Police after completion of investigation also, it is clearly stated about the occurrence. On the side of the Respondent, there is no contra evidence let in to disprove the Petitioner's claim. As such, the Tribunal has correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident.

10. It is admitted by both sides that the 1st respondent is the owner of the car bearing Reg.No.TN-22-W-9000 and the same was insured with the 2nd respondent as per Ex.R.3-Insurance Policy. However, the Tribunal pointed out that there is a violation of Insurance policy condition and therefore, concluded that the second respondent being the insurer is liable to pay the compensation at first instance with liberty to recover the same from the 1st respondent without filing any petition.

11. It is stated by the Petitioner that the victim was aged 6 years and suffered the following injuries:-

"Traumatic amputation of the medial aspect of the right foot and tibial spike protruding out at distal 3rd Asis and Grade III with Gustilo anderson compound fracture with compound fracture of distal 3rd right leg "

To Prove the injuries suffered, the Petitioner produced Ex.P.3-Accident Register copy, Ex.P.4-Discharge summary issued by Stanley Hospital and the case sheet of the minor petitioner as Ex.P.15. The Photo and C.D., is produced as Ex.P.7 and Ex.P.8. Thus it is clear that the minor Petitioner suffered Traumatic amputation with compound fracture and took treatment as inpatient in the Government Stanley Hospital, Chennai from 27.04.2012 to 24.05.2012.

12. The Petitioner examined P.W.3 doctor and he clearly stated that the Petitioner suffered 50% disability. The certificate issued by him is marked as Ex.P.16. It is further stated by P.W.3 that the Petitioner lost her leg below right knee and she will find difficulty in carrying on her normal

activities in her daily life. The Petitioner will also be in need of assistance of somebody else to move around. The Petitioner also produced Ex.P.7-Photographs showing the disfigurement due to amputation. There is no contra evidence let in by the 2nd respondent-Insurance company. In such circumstances, following the principles laid down by this Court in the Ruling reported in 2017 (1) TNMAC 251 [P.Elangovan Vs. S.Murali and others], 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], this court deems it fit to fix the extent of disablement suffered by the Petitioner at 50%, as assessed by P.W.3/doctor.

13. Admittedly, the minor petitioner was aged 6 years and as such, only notional income is to be fixed. The Tribunal fixed the notional income at Rs.5000/-. However, opposing the same, the learned counsel for the Petitioner/claimant contends that it should be fixed at least as Rs.10,000/- per month. However, considering the circumstances, it will be appropriate to fix the notional monthly income of the minor petitioner at Rs.7000/-. Further, the multiplier to be applied is 15 and by adding 40% towards future prospects and by adopting standard deduction for unmarried claimant at 50%, the loss of future earning capacity will be as follows:-

7000 + 40% Future Prospects (2800) = 9800

9800 - 50% deduction towards personal expenses

9800 - 4900 = 4900

4900 x 12 x 15 = Rs.8,82,000/-.

The Petitioner suffered amputation and multiple fractures as stated earlier and underwent treatment as inpatient from 27.04.2012 to 24.05.2012. She would have undergone mental agony, Pain and suffering and hence, for the same, the sum of Rs.1,00,000/- awarded by the Tribunal, is confirmed.

14. The Petitioner being a minor girl, having lost her one leg, her day to day life as well as matrimonial prospects are definitely affected. Hence, a sum of Rs.2,00,000/- is provided under the head as "Loss of matrimonial prospects".

15. Considering the period of treatment undergone as inpatient from 27.04.2012 to 24.05.2012, it would be appropriate to award Rs.15,000/- towards "Attender Charges". As stated above, the Petitioner having suffered amputation and there was shortening of legs, she is not in a position to carry on her regular activity and therefore, towards "loss of amenities", it will be appropriate to provide Rs.1,00,000/-. Further, considering the attendant circumstances and the claimant being aged 6 years, it will be appropriate to provide Rs.50,000/- towards Extra Nourishment; Rs.30,000/- towards "Transportation charges" and Rs.1000/- towards "Damage to clothes". However, the sum of Rs.2,00,000/- provided towards loss of future prospects by the Tribunal is not proper and as 40% of the

notional income is added towards Future Prospects of the minor claimant towards loss of future earning capacity, the said sum of Rs.2,00,000/- awarded by the Tribunal, is set aside.

16. The Petitioner produced Ex.P.5-Quotation for Resurgery for revision of amputation as Rs.70,500/- and Ex.P.6-Quotation for artificial limp as Rs.1,58,746/- and claimed compensation towards future medical expenses. Considering the injury suffered by the Petitioner and other factors, the sum of Rs.2,00,000/- provided by the Tribunal towards "Future Medical Expenses" is confirmed.

17. In view of the foregoing discussion, the modified award amount is as under:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss	5,40,000	8,82,000
2.	Pain and suffering	1,00,000	1,00,000
3.	Future Medical expenses	2,00,000	2,00,000
4.	Extra Nourishment	50,000	50,000
5.	Transportation	10,000	30,000
6.	Attender charges	7,000	15,000
7.	Loss of matrimonial prospects	2,00,000	2,00,000
8.	Damage to clothes	---	1,000
9.	Loss of amenities	---	1,00,000
	Total	11,07,000	15,78,000

In the result,

- (i) The Civil Miscellaneous Appeal is Partly Allowed;
- (ii) The appellant/claimant is entitled to award amount of Rs.15,78,000/- (Rupees Fifteen Lakhs Seventy Eight thousand only) which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;
- (iii) The 2nd respondent/Insurance company is directed to deposit the award within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. As held by the Tribunal, the second respondent being the insurer is liable to pay the compensation at first instance with liberty to recover the same from the 1st respondent without filing any petition.
- (iv) On such deposit, the same shall be invested in a Fixed Deposit in a Nationalised Bank, until she attains majority. However, the interest accrued therein, shall be withdrawn by the Mother of the claimant, once in three months. No costs.

(v) The appellant shall pay necessary additional court fee immediately.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

2. The section officer,
VR Section,
High court
Madras

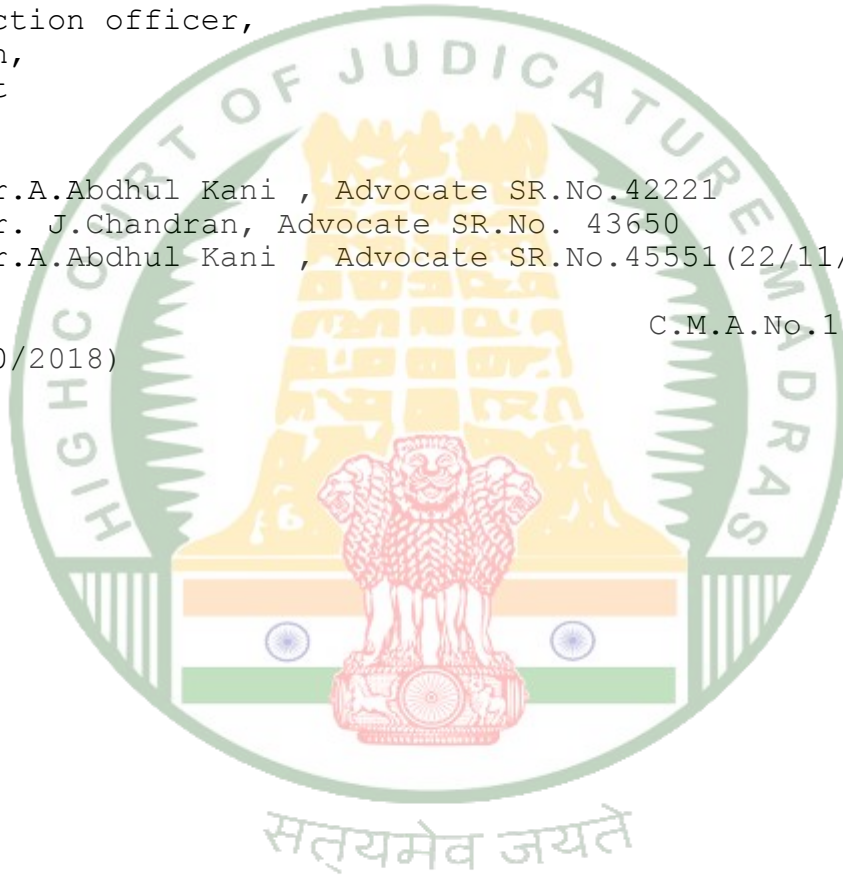
+1cc to Mr.A.Abdhul Kani , Advocate SR.No.42221

+1cc to Mr. J.Chandran, Advocate SR.No. 43650

+1cc to Mr.A.Abdhul Kani , Advocate SR.No.45551(22/11/18)

C.M.A.No.1070 of 2018

ASK(26/10/2018)



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