

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.M.A.No.2728 of 2007 and
M.P.No.2 of 2007

The Commissioner,
Survey and Settlement Department,
Chepauk, Chennai-5. ..Appellant/Respondent

Vs.

Minor Subashini @ Lavanya
Rep. by her father guardian
Subramani. ..Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 praying to allow the appeal and set aside the order dated 08.12.2005 made in MCOP No.1059 of 2004 on the file of Motor Accident Claims Tribunal / Fast Track Court No.V, Chengalpattu at Tiruvellur.

For Petitioner: Mrs. A. Madhumathi,
Additional Government Pleader (CS)

For Respondent: No Appearance

ORDER

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 08.12.2005 passed in MCOP No.1059 of 2004 on the file of Motor Accident Claims Tribunal/ Fast Track Court No.V, Chengalpattu at Tiruvellur.

2. The brief facts leading to the claim application are as follows:

On 20.10.2004 at 10.30 am when the minor petitioner was walking along the Thandalam main road on the left side, a jeep bearing Registration No. TN-07-G 1006 which was driven by its driver in a rash and negligent manner dashed against the minor petitioner. Resulting, the minor petitioner sustained head injury and multiple injuries all over the body. The petitioner's second toe was removed by surgery. The respondent has denied the occurrence of the accident. The age of the

petitioner and proof for every allegation that was made by the claimant was also disputed. The nature of injuries sustained by the petitioner and the sum claimed as compensation are also opposed by the respondent. The Tribunal after analysing the evidence and documents placed, has given a finding that the liability regarding the negligence was fixed on the driver of the vehicle and the Insurance Company is directed to pay compensation while determining the compensation. The Tribunal after perusing the documents relating to nature of injury, treatment and also the disability, awarded a sum of Rs.43,000/- in various heads as follows:

S.No	Head	Amount
1	Injuries	Rs.25,000/-
2	Treatment and other expenses	Rs.3,000/-
3	Pain and Suffering	Rs.15,000/-
Total		Rs.43,000/-

Aggrieved against the said award, this appeal has been preferred by the respondent/ appellant herein.

3.Heard Mrs.A.Madhumathi, learned Additional Government Pleader (CS) appearing for the appellant. No appearance on behalf of the respondent.

4.In the grounds of appeal, it has been stated that exhibit P11 was issued by the Doctor by assessing the disability at 25% which is one year after the date of accident. The other ground raised in the appeal is the sum awarded at Rs.15,000/- towards pain and suffering for the simple injury in the right toe of the right foot. On the part of the negligence also, it is stated that the negligence is on the part of the claimant/respondent. On the whole, the sum awarded by the Tribunal at Rs.43,000/- is disproportionate to the injury suffered by the claimant.

5.On the side of the appellant, it is argued that the injured person sustained only simple injury and the disability certificate produced by the claimant after one year and assessing the same as 25% is highly excessive and the same cannot be relied upon. But on perusal of exhibit P5-the accident register, P6-the wound certificate, P7- the Discharge summary, it is observed that the claimant has sustained crush injury in the right foot and the second toe is amputated and there is also a scar in the ankle and the claimant finds it difficult in walking fast, running and climbing a staircase. It is also observed that the injured person/claimant was only eight years

old at the time of accident and she had sustained a crush injury on the right foot. As per exhibit P6, it is observed that there is a fracture on the second toe. Even, if the claimant was admitted as in patient for one day, it is found that all toes exposed the underlined tissues and there is also partial computation at MPX TPX joint with skin resions, abrasion over fourth and second of right foot. X-rays shows amputation of second toe and nil active ortho intervention required then, shortening of second toe. Exhibit P8 is the medical prescription of a private Doctor, exhibit P9 is the photo which shows the amputated second toe of the right foot.

6.Hence, on perusal of the documents relating to the injuries sustained by the claimant, the probable pain and suffering that would have been undergone by the claimant at her young age has to be properly considered.

7.But, on the side of the appellant it is argued that the disability certificate issued by the Doctor showing 25% of disability which is one year after the date of accident cannot be considered.

8.This Court after considering the nature of injuries sustained by the claimant and the nature of treatment to the amputation of the second toe has come to a conclusion that the injuries sustained by the claimant/respondent herein are grievous in nature and the same are required to be considered properly.

9.The argument of the appellant that the compensation awarded based on the disability certificate which was issued one year after the accident is not an acceptable argument and also fixing the liability, by stating that negligence on the part of the minor petitioner is also not hold good. For the injuries sustained by the minor claimant, the sum awarded is only Rs.25,000/- and for the treatment the sum awarded at Rs.3,000/- and the medical expenses at Rs.15,000/- are very meagre and these amounts have to be properly considered.

10.Though the appellant has preferred this appeal, claiming that the award of the Tribunal is excessive stating that the disability certificate which was issued after year cannot give the basis for disputing the quantum, in view of the documents filed on the side of the claimant regarding the nature of injuries and the disability suffered and also considering the age of the petitioner at the time of accident, this Court is of the view that a sum of Rs.25,000/- could be awarded under the head "mental agony" and a sum of Rs.5,000/- could be awarded under the head "Nourishment" and the sum already awarded by the

Tribunal is modified as follows:

Sl .N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Injuries	Rs.25,000/-	Rs.50,000/-
2	Mental Agony	Rs.-----	Rs.25,000/-
3	Treatment and other expenses	Rs.3,000/-	Rs.10,000/-
4	Pain and Suffering	Rs.15,000/-	Rs.25,000/-
5	Nourishment	Rs.-----	Rs.5,000/-
	Total	Rs..43,000/-	Rs.1,15,000/-

The award of the Tribunal is enhanced to Rs.1,15,000/- from Rs.43,000/-. The enhanced amount also bears the same rate of interest 7.5% per annum.

11.It is represented by the appellant that a sum of Rs.32,000/- has already been deposited. Hence, the appellant is directed to deposit the balance amount to the credit of M.C.O.P.No.1059 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.V, Chengalpattu, Tiruvellur, within a period of four weeks from the date of receipt of a copy of this order and the respondent is permitted to withdraw the same.

12.In view of the above said modification by way of enhancement, this appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mbi/ak

To

1. The Fast Track Court No.V,
Chengalpattu at
Tiruvellur.

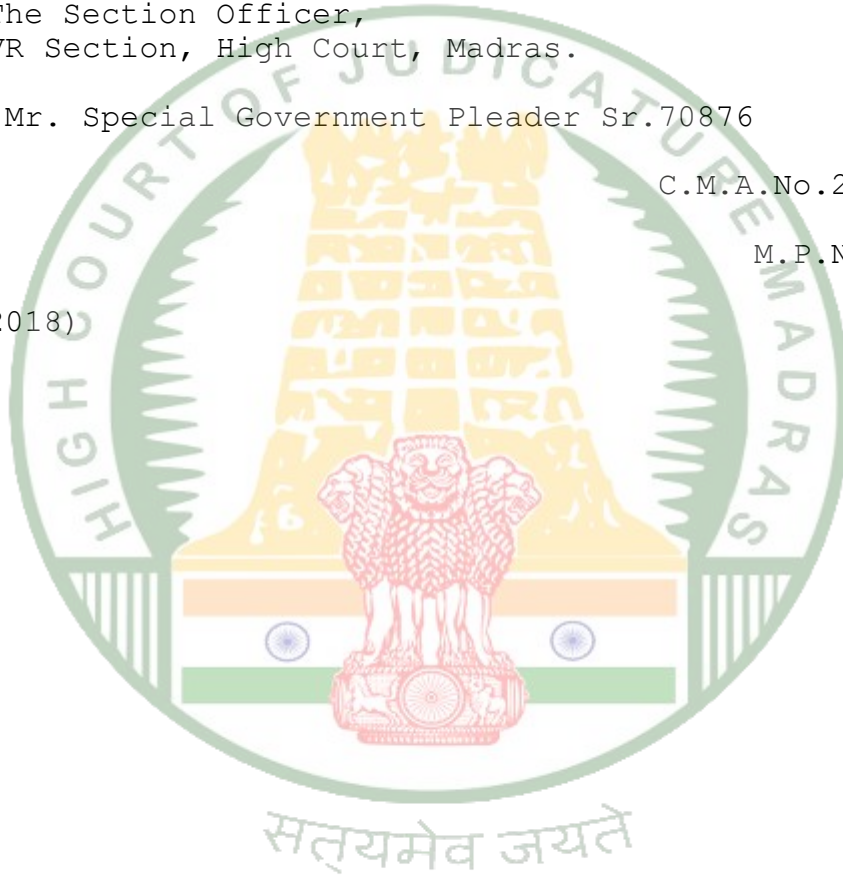
2. The Commissioner,
Survey and Settlement Department,
Chepauk, Chennai-5.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. Special Government Pleader Sr.70876

C.M.A.No.2728 of 2007
and
M.P.No.2 of 2007

PA(CO)
EU(26/11/2018)



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