

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.579 of 2011

A.Habibullah(minor)
rep.by father & next friend,
S.Hamanulla.

... Appellant

(Sole appellant declared as major,
S.Hamanulla discharged from his
guardianship vide order of Court
dated 23.08.2012 made in M.P.No.
1 & 2 of 2012 in CMA.No.579/2011)

..Vs..

1.S.Susai Adaikalam
(was set exparte in the trial Court)

2.National Insurance Co.Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai 600 002.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment in MACT.O.P.No.3977 of 2005 dated 30.10.2010 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mrs.P.T.Salim Fathima

For Respondents : Mr.D.Bhaskaran for R2
R1 - Exparte

JUDGMENT

The appellant is the claimant in M.A.C.T.O.P.No.3977 of 2005 dated 30.10.2010 on the file of the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

2.The brief facts of the case of the claimant is as follows:

The claimant filed the claim petition through his father seeking compensation of Rs.13,00,000/- for the injuries sustained by him, in a road accident that took place on

19.08.2005. The appellant/claimant aged about 12 years, on the date of the accident was studying VI std at Devi Sivagami Middle School, Kalaipet, Chennai. On 19.08.2005 the appellant/claimant was waiting on the eastern side of the Ennore Express Highways near the Thangal Main Road Junction for crossing the road. At that time, a speeding motor cycle bearing Registration No.TN-59-K-7013 hit the appellant/claimant, as a result of which, he sustained multiple injuries. According to the appellant/claimant, the accident took place due to the rash and negligent driving of the rider of the motor cycle and that since the owner of the motor cycle had insured his vehicle with the second respondent National Insurance Company Limited, both the respondents are jointly and severally liable to pay the compensation to the claimant. The first respondent remained absent before the trial Court. The second respondent filed a counter denying all the allegations of the appellant/claimant.

3. The learned II Judge, Court of Small Causes, Chennai, (Motor Accidents Claims Tribunal) after analyzing the entire evidence on record, awarded a sum of Rs.2,88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant filed the present appeal.

4. Mrs.P.T.Salaim Fathima, the learned counsel appearing for the appellant would contend that the appellant was aged about 12 years, on the date of the accident and that he has sustained the following injuries:-

"Laceration over the occipital region of scalp 3x3 x 3cm laceration over the chest just to the right of the sternal border over the right third intercostal space 2x2x2 cm with clot. No active bleeding. Laceration over the volar aspect of right wrist - 5x2x1 cm with active oozing and laceration over the volar aspect of right wrist 2x1x1 cm with active ooze.

Perusal of same reveals that at the time of admission and subsequently the petitioner became unconscious, no eye opening, no verbal response, no movements and hence CT Scan of brain taken urgently. CT.Brain done and it reveals that left fronto tempo parital acute SDH with midline shift, all cistersis obliterated and mobony fracture made out. Then the petitioner underwent surgery on 19.08.2005 itself for left fronto tempo parital decompression craniotomy and evacuation of acute. SDH. This surgery procedure stated in Ex.P5 as follows:

"ETGA pt in supine position with head to right side, left fronto tempo parietal scalp marked, and infiltrated, insized, scalp flap opened, 5 burhole free bone flap raised and bone nibbled around to produce adequate decompression then dura opened at base towards S.S.S. Cross cuts given Acute SDH surfacing which washed gently and evacuated. About 75 ml liquid blood and 75 ml clotted blood and 75 ml clotted blood dura stiched ...wound closed". Hence the petitioner has proved that he has to be compensated for his injuries in the following heads.

5. Dr.Amarnath R.Sowlee, who examined the appellant/claimant has assessed the partial permanent disability as 40%.

6. A perusal of the records shows that the appellant/claimant has lost some portion of the skull over the brain and now the brain is covered only by the skin. In fact, the trial Court has observed that the appellant/claimant has to take much care and caution to avoid any injury in the head throughout his life. In the circumstances of the present case, I am of the opinion that the award of compensation Rs.2,88,000/- is too meagre and therefore, is liable to be enhanced. Since a part of skull is removed and the partial permanent disability is taken up 40%, considering the age of the injured and also considering the fact that he has to take much care and caution to avoid any injury in the head throughout his life, multiplier method has to be adopted in the light of the decision of the Division bench of the Hon'ble Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 wherein, it is held thus:

"9. The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of

future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded

compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

7. Applying the principles laid down in the above said decision, multiplier method has to be adopted. Since age of the injured person was 12 years, on the date of the accident, the proper multiplier is 18 and his notional income is fixed at Rs.3,000/- to which 40% is added towards future prospects which works out to Rs.4,200/-. Therefore, the partial permanent disability is $(4,200 \times 12 \times 18 \times 40/100) = 3,62,880/-$.

8. Apart from this he is entitled to a sum of Rs.20,000/- and 25,000/- towards Transportation expenses and Extra nourishment though the Tribunal awarded only a sum of Rs.1,000/- for transportation charges and a sum of Rs.5,000/- for extra nourishment.

9. The learned counsel appearing for the appellant would contend that the appellant/claimant was hospitalized for 31 days and therefore, he would have definitely incurred a sum of Rs.20,000/- towards for transportation charges. Since only a sum of Rs.25,000/- was awarded for extra nourishment. The trial Court did not award any amount for attendant charges, and therefore, Rs.20,000/- should be awarded in the interest of justice towards "Attendant Charges."

10. Thus, the enhanced award passed by this Court, under various heads as mentioned below:-

S.Nos.	Heads	Amount granted
1.	Partial Permanent Disability	3,62,880/-
2.	Transport expenses	20,000/-
3.	Extra Nourishment	25,000/-
4.	Damages to cloths	1,000/-
5.	Medical Expenses	1,000/-
6.	Future Medical Expenses	25,000/-
7.	Attendant Charges	20,000/-
8.	Pain and Sufferings	2,00,000/-
9.	Loss of Amenities	50,000/-
Total		7,04,880/-

11. Thus, the appellant/claimant is entitled to a compensation of Rs.7,04,880/- together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of deposit.

12. In the result,

(i) The appeal is partly allowed and a sum of Rs.7,04,880/- (Rupees Seven lakhs four thousand and eight hundred eighty only) is awarded to the appellant/claimant as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit. The National Insurance Company, namely, the second respondent is directed to deposit the enhanced compensation amount along with interest to the credit of M.A.C.T.O.P.No.3977 of 2005 on the file of the Motor Vehicle Accident Claims Tribunal, (II Judge, Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount.

(ii) The claimant is directed to pay necessary Court fee, if any, for the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mbi/dna

To

1) The II Judge, Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

2) The Section Officer,
VR Section,
High Court, Madras. (2 copies)

+1 cc to Mr.D.Bhaskaran, Advocate, SR No.79763

+1 cc to Mr.M.Swamikkannu, Advocate, S.R.No.79687

C.M.A.No.579 of 2011

NMI (CO)
SSM(02/01/2019)



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