

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.227 of 2018

A.Suguna (Minor)
Rep. by father and next friend S.Anbalagan
No.20, Rajiv Gandhi Road,
Rajiv Gandhi Nagar,
Alappakkam,
Chennai 600 116 ... Appellant/ Petitioner

Vs

1.K.Srinivasan
No.43, 80 feet Road,
West Vijayaraghavapuram,
Saligrahman, Chennai 600 093
(was set exparte in the Trial Court)

2.IFFCI-TOKIO General Insu. Co. Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai 600 017.

Now functioning at

IFFCO-TOKIO General Insu. Co. ltd.,
Iffco Bhavan 4th Floor,
No.128, Habibullah Road,
T.Nagar,
Chennai 600 017. ... Respondents/ Respondents

PRAYER : Civil Miscellaneous Appeal preferred
against the Judgment and Decree dated 01.11.2017 made in
MACT.OP.No.3002 of 2013 on the file of the II Judge,
Motor Accident Claims Tribunal (Court of Small Causes),
Chennai.

For Appellant : Ms.P.T.Saleem Fathima

For Respondents : Mr.S.Arunkumar (for R2)

R1-Exparte

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant against the award of the Rs.2,38,000/-, for the injuries sustained by the appellant/claimant, aged about 7 years, studying in II standard, in the accident, which occurred on 06.04.2013, while she was walking on the road and hit by a TATA Ace vehicle bearing Reg. No. TN 06 A 0457, which was driven rashly and negligently, resulting in amputation of left leg below knee of the claimant.

2.After the accident, the claim petition was filed. on contest the Tribunal found that the accident occurred because of the rash and negligent driving of the TATA Ace vehicle and awarded a sum of Rs.2,38,000/- as compensation. Aggrieved over the quantum of compensation, the claimant is before this Court.

3.Heard Ms.P.T.Saleem Fathima, learned counsel appearing for the appellant and Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent. Since the 1st respondent remained ex parte before the Tribunal, notice to the 1st respondent is dispensed with, as per the judgment of the Full Bench of the Madhya Pradesh High Court rendered in Mrs.Jamuna Bai V. V. Chhote Singh reported in I (2004) Acc. 190 (FB).

4.Ms.P.T.Saleem Fathima, learned counsel appearing for the appellant would submit that the claimant suffered amputation of leg below knee and the Tribunal determined disability at 55% and erroneously awarded a sum of Rs.1,65,000/-, by awarding Rs.3,000/- per percentage. She would further submit that the multiplier method has to be followed, for calculating the loss of income as the appellant suffered amputation.

5.Mr.S.Arunkumar, learned counsel appearing for the respondent/insurance company would support the award.

6.It is unfortunate that the Tribunal after finding that the child's left leg below knee was amputated, still choose to grant only Rs.3,000/- per percentage. This is a classic case, wherein the multiplier method has to be adopted following the judgment of Rajkumar Vs. Ajay Kumar reported in 2011 ACJ 1. In this case, as proved by Ex.P.3 to Ex.7 and Ex.P.15, the appellant child's leg below knee was amputated and the Doctor determined the disability at 55%. As determined by PW2-Doctor as well as Tribunal, this Court confirms the percentage of disability at 55% .

7.The victim was aged about 7 years at the time of accident and she was studying in II standard. The Hon'ble Supreme Court in V.Mekala Vs.M.Malathi and others reported in 2014 (2) TN MAC 6 (SC), determined the disability at 70% for the loss of leg of the XI Standard student and determined the monthly income at Rs.10,000/-. In that case, the accident should have occurred in the year 2005 as the CMA itself of the year 2008 viz., CMA.No.2131 of 2008. Therefore, for the accident occurred in the year 2005, the Hon'ble Supreme Court had determined the monthly income at Rs.10,000/-. Whereas in the present case, the accident occurred on 06.04.2013 and therefore, this court determines the monthly income of the victim at Rs.14,000/-.

8.As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). 40% has to be added towards future prospects. After adding 40% towards future prospects, the monthly income would be at Rs.19,600/- (Rs.14,000/- + 40% of Rs.14,000/-).

9.Since the age of the victim was 7 years, at the time of accident, the appropriate multiplier is "15" and the loss of income would be at Rs.19,40,400/- (Rs.19600/- x 12 x 15 x 55/100).

10.Medical bills:

The Tribunal awarded a sum of Rs.35,420/- under this head, the same is confirmed.

11.Permanent Disability:

Since the child suffered disability at the very young age, as per the judgment in B.Kothandapani Vs. Tamil Nadu State Transport Corporation Limited, reported in 2011 ACJ 1971, Rs.1,65,000/- awarded by the Tribunal under this head is confirmed.

12.Attendant charges:

The Tribunal awarded a sum of Rs.2,000/- towards attendant charges, which is negligible. Hence, the same is enhanced to Rs.50,000/-

13.Pain and suffering:

The Tribunal awarded a sum of Rs.25,000/- under this head and the same is enhanced to Rs.2,00,000/- as the victim as a child would have suffered much pain and suffering and mental agony.

14.Loss of Marital prospects:

It is very difficult to the claimant, a girl child, to get married with her status as amputated leg. Therefore, she may not find a suitable alliance or there shall not be any chance of her getting married. To put in other words, the chance of marital prospects is very

bleak and therefore, a sum of Rs.3,00,000/- is awarded under this head.

15.Loss of amenities:

A sum of Rs.2,00,000/- is awarded towards the loss of amenities.

16.Extra nourishment:

The Tribunal awarded only a sum of Rs.5,000/- under this head and the same is enhanced to Rs.50,000/-.

17.Transportation:

The Tribunal awarded a sum of Rs.5,000/- under this head and the same is enhanced to Rs.50,000/-, as the victim should have visited hospital many times for treatment before and after amputation.

18.Future medical expenses:

A sum of Rs.2,50,000/- is awarded to the claimant to fix artificial limbs.

Head	Amount (Rs.)
Total loss of income	1940400
Medical bills	35420
Permanent Disability	165000
Attendant charges	50000
Pain and suffering	200000
Marital prospects	300000
Loss of amenities	200000
Extra nourishment	50000
Transportation	50000
Future medical expenses	250000
Total	3240820

19.Hence, the total compensation payable in this case is Rs.32,40,820/- rounded off to Rs.32,40,000/-, enhancing the compensation of Rs.2,38,000/- awarded by the Tribunal.

20.The interest awarded by the Tribunal at the rate of 9% per annum is on the higher side, hence the same is reduced to 7.5% per annum.

21.The claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall stand automatically deleted. The necessity to include the

is paid promptly, as many complaints are received from the registry stating that the claimant's counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

22.The Insurance company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest and costs (except interest for future medical expenses of Rs.2,50,000/-) , before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. Since future medical expenses is uncertain and it has to be spent in future, no interest would be payable for the sum of Rs.2,50,000/-. On such deposit being made, the Tribunal shall transfer a sum of Rs.7,40,000/- to the bank account of the father of the claimant through RTGS within a period of one week thereon. The balance award amount of Rs.25,00,000/- shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till the minor attains majority and the said amount should be used for the educational and marriage purpose of the claimant only. The father of the claimant is permitted to withdraw interest accruing on such deposit once in three months.

23.In fine, the Civil Miscellaneous Appeal is partly allowed by enhancing the Compensation amount of Rs.2,38,000/- to Rs.32,40,000/-. No costs.

Sd/-

Assistant Registrar (CS viii)

//True Copy//

Sub Assistant Registrar

To
The II Judge,
(Motor Accident Claims Tribunal)
Court of Small Causes,
Chennai 104.

+1cc to M/s.M.Swami kannu, Advocate SR.No. 45822
+1cc to Mr.S.Arunkumar , Advocate SR.No. 46097

C.M.A.No.227 of 2018

ASK (24/12/2018)