

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.292 of 2018

Minor Gangadharan
Rep. By next friend/mother
Subbulakshmi
Kamraj Street,
Ammamet,
Anthiyur Taluk
Now residing at 2/30, Thottipalayam Main Road
Oorachikkottai, Kuruppanaikpalayam Post
Bhavani Taluk, Erode District ...Appellant/Petitioner

vs

1.P.Valliappan
(Notice to R1 may be dispensed with for the time being since
he was set exparte before the Tribunal)

2.United India Insurance Company Limited
Rep. By its Manager, Muthiah Complex, 2nd floor
1170, Mettur Main Road, Erode-638 011
...Respondents/Respondents

Civil Miscellaneous Appeals filed against the judgment and
decree dated 08.03.2017 made in M.C.O.P.No.98 of 2015 on the
file of Motor Accident Claims Tribunal, Subordinate Court,
Bhavani.

For appellant : : Mr.C.Kulanthaivel
for Respondents : : Mr.C.Paranthaman for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellant/claimant, challenging the decree and judgment dated
08.03.2017 made in M.C.O.P.No.98 of 2015 on the file of Motor
Accident Claims Tribunal, Subordinate Court, Bhavani.

2. The case of the Petitioner is that on 20.06.2014 at about
7.15 p.m., while the petitioner was proceeding on foot in
Nandiyur to Ammapettai Road, near Veterinary hospital, towards
west to east in the extreme left side of the road, a jeep
bearing Reg.No.TN-29-M-2480 came at high speed, driven in a rash
and negligent manner by the 1st respondent dashed against the
petitioner resulting in grievous injuries to him. The occurrence

took place only due to negligence of the 1st respondent herein. The petitioner was aged 10 years and he was a student at that time. The Petitioner took treatment in various hospitals and suffered multiple fracture on his head and injuries all over the body. The Petitioner underwent treatment as inpatient for 3 months. The Petitioner was a bright student and was securing 1st rank in the school and now after the accident, he is not able to concentrate on his studies and he is suffering from loss of memory, frequent headache and giddiness. Hence, he sought for compensation of Rs.3,00,000/- from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, the 2nd respondent/Insurance Company contends that accident does not occur in the manner as alleged by the Petitioners. The minor petitioner aged about 10 years suddenly came in the centre of the road without seeing the upcoming vehicle and the same resulted in the accident. The claim of the petitioner about the injuries suffered and the treatment taken by him is denied. The accident occurred not due to the fault of the 1st respondent, but only due to the negligence of the minor petitioner. The amount claimed by the petitioner is exorbitant. Hence, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioner examined P.W.1 and P.W.2 and produced documents Ex.P.1 to P.15 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The 1st respondent remained exparte. On the basis of available evidence, the Tribunal passed the award for a sum of Rs.2,18,000/- as compensation to the minor petitioner. Being not satisfied with the award, the petitioner represented by his mother, has come forward with the present appeal seeking enhancement of the award amount.

5. The learned counsel for the appellant/petitioner contends that the Tribunal failed to consider the medical records available on file properly. The Tribunal which accepted 28% permanent disability failed to assess the functional disability properly. The evidence of P.W.2 about the present condition of the minor petitioner was not properly considered. The Tribunal ought to have applied multiplier method, but failed to do so. The Tribunal ought to have awarded notional compensation following the Apex Court Rulings. Thus the appellant/petitioner/claimant seeks enhancement of the award amount by entertaining the appeal.

6. On the other hand, the learned counsel for the 2nd respondent /Insurance Company contends that the claim of the appellant/petitioner is exorbitant and unsustainable. The negligence of the minor petitioner alone caused the accident and as such, he is not entitled for any compensation. On the

available evidence, the Tribunal awarded excessive compensation and no ground is made out to enhance the compensation. Hence, the 2nd respondent sought for dismissal of the appeal.

7. The only issue agitated by both sides before this forum is quantum of the award. The negligence aspect is not raised before this court. The oral evidence let in by the petitioner clearly proves that the accident occurred only due to the negligence of the 1st respondent driver. Further, the Police have registered Ex.P.1 FIR against the driver of the first respondent vehicle and after completing the investigation, laid Ex.P.6 charge sheet also against the same person. Further, it is clear from Ex.P.3 Rough sketch that the accident occurred in the left side edge of the east west road. It is therefore clear that the respondent vehicle dashed against the minor petitioner on the side of the road only. It is also clear from Ex.P.1 contents as well as Ex.P.6 charge sheet that the driver of the 1st respondent vehicle alone caused the accident. Hence, as owner and insurer of the vehicle, the respondents are jointly and severally liable to pay the compensation to the petitioner.

8. The petitioner stated that due to the accident, he suffered 28% permanent disability. As per Ex.P.5 Wound Certificate, he has taken treatment in Ramakrishna Hospital, Coimbatore, and again in the same hospital from 21.06.2014 to 07.07.2014 as evidenced by Ex.P.7 Discharge summary. The Petitioner also produced CT Scan Report and MRI Scan report as Ex.P.9 and Ex.P.10. The photo taken showing the brain of the injured is produced as Ex.P.11. The petitioner also examined the doctor P.W.2 who assessed the disability and issued Ex.P.12 disability certificate. It is evident from the disability certificate issued by P.W.2 doctor that the petitioner suffered 28% permanent disability. Further, the doctor also stated that the minor petitioner is suffering from loss of memory, frequent headache and giddiness. Further, it is stated that due to giddiness and pain on the left side of the brain, the minor petitioner is not able to participate in the sporting activity in the school. Pointing it out, the learned counsel for the petitioner contended that the Tribunal ought to have applied multiplier method for the permanent functional disability or notional lumpsum for permanent disability. In support of the said contention, he relied upon the Ruling of the Apex Court reported in 2013 (2) TNMAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another] to contend that for the kind of disability suffered by the petitioner, lumpsum payment of Rs.3,00,000/- should be awarded for non-pecuniary damages. In the said Ruling, it is held as follows:-

"8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to

the motor vehicles act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs 15,000 per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs 3 lakhs; up to 60%, Rs 4 lakhs; up to 90%, Rs 5 lakhs and above 90%, it should be Rs 6 lakhs. For permanent disability up to 10%, it should be Rs 1 lakh, unless there are exceptional circumstances to take a different yardstick. "

9. Following the above said Ruling for a non-earning member like the petitioner who was a student at the time of the accident, towards permanent disability above 10% to 30%, a lumpsum payment of Rs.3,00,000/- should be awarded. P.W.2 doctor also clearly stated that due to injury suffered, he fixed the disability at 28%. It is clear from the evidence let in by the petitioner that due to head injury suffered, minor petitioner is now suffering from frequent head ache and loss of memory. In such circumstances, following the above Apex court Ruling, it is appropriate to fix non-pecuniary damages at Rs.3,00,000/-. Considering the reasons stated by the appellant/petitioner, it will be appropriate to award

Rs.10,000/- towards future medical expenses. That apart, the amount awarded by the Tribunal towards actual medical expenses, Rs.60,000/-; towards Transport expenses Rs.10,000/- is hereby confirmed, finding it as just and reasonable. Therefore, the modified compensation awarded by this court is Rs.3,80,000/-.

10. In the result, the Civil Miscellaneous Appeal is allowed. The Petitioner viz., Minor Gangadharan, Rep.by his mother Subbulakshmi, is entitled to Rs.3,80,000/- as award amount. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance company is directed to deposit the above modified enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. The Appellant/Petitioner being minor, the award amount shall be invested in Fixed Deposit in a Nationalised Bank till he attains majority. The Appellant/Petitioner is directed to pay the required court fee for the enhanced award amount before getting the copy of decree. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

nvsri
To.

1. The Motor Accident Claims tribunal,
Subordinate Court, Bhavani.

2. The Section Officer, V.R. Section,
High Court, Madras.

+2 Ccs to Mr.C. Paranthaman, Advocate sr 21494.

+1 CC to Mr.C. Kulanthaivel, Advocate sr 21384.

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CNR (CO)
SP(13/06/2018)