

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2365 of 2017

Minor Gandhi S/o.Rajendiran
Rep. By his next friend mother
Anjalai as guardian.

..Appellant/Petitioner

vs

1.K.Selvamani

2.The Divisional Manager,
National Insurance Company Limited
Jawaharlal Nehru Street,
Pondicherry-605 001

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 19.09.2013 made in MCOP.No.2100 of 2010 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore.

For appellant : : Mr.SP.Yuvaraj
for Respondents : : Mr.J.Chandran for R2.
R1-Dispensed with.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Claimant, challenging the Award and decree dated 19.09.2013 made in MCOP.No.2100 of 2010 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the minor petitioner is that on 05.01.2010 at about 4.00 p.m., while he was standing in front of the house at Kammapuram, the 1st respondent motor cycle bearing Reg.No.TN-31-Z-7534 which was insured with the 2nd respondent came at high speed in a rash and negligent manner and as the rider of the vehicle lost control, dashed against the minor boy, who was standing in front of his house, causing him multiple grievous injuries. The accident occurred only due to negligence of the 1st respondent vehicle rider. The minor petitioner who was

aged 15 years, suffered fracture in his right hand wrist and multiple injuries all over his body. The Petitioner took treatment as inpatient in Government Hospital, Vridhachalam, and continued treatment at Government Hospital, Cuddalore, and subsequently, in a private hospital. Due to the injury suffered, the petitioner was unable to attend to his part time job. Further due to fracture in the wrist, he is unable to write and hold the things normally. As the future prospects is affected, the Petitioner sought for Rs.5,00,000/- as compensation from the respondent, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company disputes and denies the claim of the Petitioner about the manner in which the accident occurred. The age, avocation and income of the Petitioner is not true. The accident did not occur due to negligence of the 1st respondent vehicle driver, but only due to minor petitioner himself. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, on the side of the Minor Petitioner, his mother was examined as P.W.1 and other witnesses as P.W.2 and P.W.3 while documents Ex.P.1 to Ex.P.8 is produced to prove his claim. On the side of the respondents, while the 1st respondent remained exparte, neither oral nor documentary evidence was let in by the contesting 2nd respondent.

5. After analysing the evidence available on record, the Tribunal found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.87,500/- payable by the respondents to the Petitioner.

6. Being not satisfied with the quantum of the award, the minor petitioner has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the appellant/Petitioner contends that the evidence on record was not properly considered by the Tribunal and the disability assessed by the Tribunal is on the lower side. The amount provided for under different heads is very nominal. As injury has affected the future prospects of the minor petitioner, the amount awarded under different heads has to be enhanced. Thus, the Petitioner sought for enhancement of the quantum of the award by entertaining the appeal.

9. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident having occurred due to negligence of the minor petitioner, there is no scope for enhancement of compensation as claimed by the

Petitioner. The Tribunal, on proper appreciation of evidence on record, has passed award which itself is on the higher side. Hence, the 2nd respondent sought for dismissal of the appeal.

10. This is only quantum appeal. The issue of negligence is not seriously disputed by the appellant. The mother of the minor petitioner who deposed as P.W.1 has clearly stated about the accident which took place at about 4.10 p.m., The Police also registered Ex.P.1-FIR against the 1st respondent vehicle driver only. It is clear from Ex.P.3 copy of the MVI Report that there was no mechanical defect in the said vehicle. It is also evident from Ex.P.4-copy of the Insurance Policy that the 1st respondent vehicle was insured with the 2nd respondent. The rider of the 1st respondent was having valid licence as evidenced by Ex.P.5-Driving Licence. It is therefore clear that the rider of the vehicle possessed valid licence and there is no mechanical defect in the offending vehicle. The Tribunal on careful analysis of P.W.1 and P.W.2 evidence and the contents of Ex.P.1-FIR found that the negligence of the 1st respondent vehicle driver only caused the accident. On the side of the 2nd respondent, no contra evidence was let in. As such, the conclusion of the Tribunal that the negligence of the 1st respondent vehicle driver alone caused the accident is just and proper and based on proper appreciation of materials available on record. The same needs no interference.

11. The Petitioner has stated that he suffered fracture in his right hand and suffered multiple injuries all over the body. It is clear from Ex.P.2 that the minor petitioner sustained fracture and multiple injuries. The doctor who treated the Petitioner deposed as P.W.3 and the disability certificate issued by him is marked as Ex.P.7. The X-ray taken by him is produced as Ex.P.8. According to P.W.3/doctor the fractured bones have malunited and consequently, the minor petitioner finds difficulty in using his right hand as the movement of right wrist is restricted. As such, P.W.3 doctor fixed the disability suffered by the Petitioner at 30%. Nothing is elicited in cross examination of P.W.3 to discredit his version. Further, no contra evidence is let in by the respondent to disbelieve P.W.3 evidence. Therefore, the Tribunal is justified in fixing the disability at 30%. The Tribunal taking into account the nature of injury suffered by the Petitioner awarded disability compensation at the rate of Rs.2000/- per percentage. This the Petitioner/appellant contends is not proper and appropriate. It is contended that the Tribunal ought to have adopted multiplier method instead of percentage method. However the same is opposed by the 2nd respondent/Insurance company by stating that there is no need to adopt multiplier method, as the Petitioner has not suffered any functional disability. As such, considering the fact that the Petitioner was a student and has

suffered fracture in his right hand which would prevent him from writing properly and also using his right hand otherwise, it will be appropriate to compensate the petitioner at Rs.3000/- per percentage instead of Rs.2000/- as done by the Tribunal. Thus, the compensation for disability is calculated as under:-

$$\text{Rs.3000/-} \times 30 = \text{Rs.90,000/-}$$

12. Considering the fact that the Petitioner took treatment as inpatient and also thereafter as out patient for some time, the Petitioner has to be compensated for pain and suffering. Accordingly, a sum of Rs.25,000/- is awarded instead of Rs.15,000/- given by the Tribunal. As the petitioner was a minor boy and the movement of the right hand is restricted, towards loss of amenities, Rs.20,000/- is provided. The Tribunal has awarded Rs.5000/- towards Extra Nourishment and the same is on lower side. As the petitioner suffered fracture and took treatment for long time, towards Extra Nourishment, Rs.15,000/- is provided. Likewise, a sum of Rs.10,000/- is provided for "Attendant Charges". The sum of Rs.2,500/- provided towards "Transportation" is confirmed. As the petitioner/claimant is stated to have earning some amount by doing part time job and that he has taken treatment for the length of time, it would be appropriate to provide a sum of Rs.2,500/- for loss of income during treatment period. Thus, the modified compensation is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pain and suffering	15,000/-	25,000/-
2.	Transport to Hospital	2,500/-	2,500/-
3.	Extra nourishment	5,000/-	15,000/-
4.	Other incidental expenses	5,000/-	---
5.	Disability	60,000/-	90,000/-
6.	Loss of income during treatment period	--	2,500
7.	Loss of amenities	--	20,000/-
8.	Attender charges	--	10,000/-
	Total	87,500/-	1,65,000/-

11. In the result,
 (i) This Civil Miscellaneous Appeal is Partly Allowed;
 (ii) The award amount is enhanced to Rs.1,65,000/- from Rs.87,500/-

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation. As per the order passed in CMP.No.11150 of 2017 in CMA.SR.44914 of 2017 dated 21.07.2017, interest is waived off for the delay of 1272 days in filing the appeal.

(iv) The second respondent/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) On such deposit, the award amount shall be invested in a fixed deposit in a Nationalised Bank and the same shall be renewed periodically, which can be renewed until the appellant/claimant attains the age of majority. The interest accrued therein shall be withdrawn by the mother of the minor appellant/claimant once in three months.

(vi) No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Motor Accident Claims Tribunal,
Special Subordinate Judge, Cuddalore.
- 2.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.SP.Yuvaraj, Advocate SR.NO.36211

+1cc to Mr.J.Chandran, Advocate SR.NO.36383

SS(CO)

sm:25.10.2018

सत्यमेव जयते C.M.A.No.2365 of 2017

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