

[IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.670 of 2018

1.Muthu Bharathi (Minor)

Rep. By his father and next friend

K.Loganathan @ Logu

..Appellant/Petitioner

Vs

1.Parthiban

2.IFFCO TOKYO General Insurance Co.Ltd.,

New No.28, Old No.195, North Usman Road

T.Nagar, Chennai-17.

..Respondents/Respondents.

Prayer:- Civil Miscellaneous Appeal filed U/s. 173 of the Motor Vehicle Act 1983 against the judgment and decree dated 28.11.2014 made in MCOP.No.4598 of 2011 on the file of learned Motor Accident Claims Tribunal, V Judge, Court of Small Causes at Chennai.

For appellant :: M/s.A.N.Viswanatha Rao

Ramya V.Rao.

For respondents :: M/s.C.R.Krishnamoorthy for R2.

For R1 :: Exparte before the lower court

JUDGMENT

The Civil Miscellaneous Appeal is filed by the Petitioner/Appellant, against the judgment and decree dated 28.11.2014 made in MCOP.No.4598 of 2011 on the file of learned Motor Accident Claims Tribunal, V Judge, Court of Small Causes at Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner viz., L.Muthu Bharathi aged 9 years represented

by his father is that on 10.07.2011, at about 21.30 hours, when the minor petitioner was travelling as pillion rider in the bicycle along with his father, while going near old Tasmac shop in Elaiyanarkuppam, a two wheeler bearing Reg.No.TN-19-B-8710 belonging to the 1st respondent came at high speed, driven in a rash and negligent manner, dashed against the bicycle in which the minor petitioner was going due to which he sustained grievous injuries all over his body. The minor petitioner was aged 9 years and was studying 4th standard. It is stated that due to the injuries suffered by him in the accident, his education is affected. Thus, the petitioner seeks a sum of Rs.7,00,000/- as compensation from the respondents-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 contended that the accident did not occur in the manner alleged by the Petitioner. The amount claimed by the Petitioner is exorbitant. The Petitioner is not suffering from any incapability due to the injuries suffered by him. The manner in which the accident took place is disputed. There was no negligence on the part of the 1st respondent driver. It was only due to the negligence of the petitioner, the accident took place. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 to P.W.3 and documents Ex.P.1 to Ex.P.21 were produced to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal found that the negligence of the 1st respondent driver alone caused the accident, passed the Award for a sum of Rs.4,00,000/-. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioner, has come forward with the present appeal.

5. The learned counsel for the appellant/injured Petitioner contends that the minor petitioner suffered fracture in right tibia, Grade-1 Fracture in right forearm, fracture of lateral epicondyle in humerus and multiple injuries all over the body and the same being grievous one, the Tribunal ought to have awarded higher compensation. The Tribunal failed to award adequate compensation under different heads. The Tribunal failed to consider the evidence properly and as such, the appellant/petitioner sought for enhancement of the award amount by allowing the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the petitioner himself contributed to the accident and as such, he is not entitled to seek any amount as compensation. Further the second respondent contended that the award passed by the Tribunal

itself is on the higher side and there is no scope for enhancement. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. According to the oral evidence of P.W.1, who is the father of the minor petitioner, the accident occurred due to the negligence of the rider of the 1st respondent vehicle only. It is also clear from Ex.P.2-FIR that the Police Registered the case against the rider of the two wheeler. There is no contra evidence let in on the respondents side. It is therefore clear that on the basis of P.W.1 oral evidence and Ex.P.2-FIR that the accident occurred due to negligence of the rider of the two wheeler only.

9. As per the oral evidence of P.W.1, the minor petitioner suffered grievous injuries. It is clear from Ex.P.3-Discharge summary that the minor petitioner suffered the following injuries:-

- (i) fracture in right tibia,
- (ii) Grade-I Fracture in right forearm,
- (iii) fracture of lateral epicondyle in humerus
- (iv) multiple injuries all over the body

It is also clear from P.W.2 doctor's oral evidence that the minor petitioner finds difficulty in sitting, standing, squatting, climbing upstairs; due to the fracture in right hand, the movements are restricted and he finds it difficult in raising his hands and carrying weight. As such, he faces trouble in performing his routine work and as he is a student, finding it difficult to perform any extra curricular activities. It is also seen from the documents produced by the doctor that the minor petitioner suffered fracture in right hand, right leg and the same are malunited. The medical expert who deposed as P.W.2 assessed disability at 25% each in respect of malunited fractures in right hand and right leg. Likewise, P.W.3 doctor stated that the claimant sustained Liver laceration for which ultra sonogram and C.T.scan was taken and found that minimal fluid in abdomen and peripheral sub capsular laceration with contusion segment of right lobe of liver fluid in the hepato renal region. It is stated that the petitioner finds difficulty to sleep on affected side of liver, to lift weight and the petitioner is having problem in proper digestion and as such, he assessed 25% partial permanent disability and produced Ex.P.20 Disability Certificate.

10. The learned counsel for the 2nd respondent/Insurance company contended that the disability assessed by P.W.2 and P.W.3 is on the higher side and the same should not be accepted. However, there is no contra evidence let in by the 2nd respondent/Insurance company to contradict the assessment made by P.W.2 and P.W.3 doctors on the disability. The Tribunal while assessing the whole body disability, fixed the disability as 70% and awarded a sum of Rs.3000/- per percentage of disability. The same appears to be just and proper and no ground is made out by the 2nd respondent/Insurance company to refix the disability. Thus the compensation awarded towards disability is confirmed and the same is as under:-
Rs.3000/- x 70% =Rs.2,10,000/-.

11. As stated above, the minor petitioner suffered fracture and grievous injuries all over the body and sustained liver laceration and thereby suffering from liver shrinkage. Further it is stated by the petitioner that he is feeling pain and tenderness in liver border and pain in abdomen. The petitioner states that he is still having digestion problem. Both P.W.2 and P.W.3 medical experts stated that the petitioner is having difficulty to attend to his day to day work and in raising hands or lifting weight. As such, it will be appropriate to award Rs.1,00,000/- towards pain and suffering undergone by the petitioner. Further, considering the nature of injury and treatment undergone by the petitioner, he would have required an attender during the entire treatment period. Hence, it is reasonable to grant Rs.15,000/- towards Attender Charges, instead of Rs.5,000/- granted by the Tribunal. That apart, the Tribunal awarded compensation under other heads which are just and proper and the same needs no interference. Hence, the award passed by the Tribunal, is modified as follows:-

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Transportation	Rs. 8,300/-	Rs. 8,300/-
2.	Extranourishing food	Rs. 50,000/-	Rs. 50,000/-
3.	Miscellaneous expenditure	Rs. 1,700/-	Rs. 1,700/-
4.	Attender charges	Rs. 5,000/-	Rs. 15,000/-
5.	Medical expenses	Rs. 25,000/-	Rs. 25,000/-
6.	Disability	Rs.2,10,000/-	Rs.2,10,000/-
7.	Damages for pain, suffering and trauma	Rs. 50,000/-	Rs.1,00,000/-
8.	Loss of amenities	Rs. 50,000/-	Rs. 50,000/-

Sl.No .	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
	Total	Rs.4,00,000/-	Rs.4,60,000/-

In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
- (ii) The Appellant/Minor Petitioner is entitled to Award amount of Rs.4,60,000/- as compensation.
- (iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.
- (iv) The 2nd respondent/Insurance Company is directed to deposit the entire award amount along with proportionate cost and interest, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;
- (v) As the Appellant/Petitioner is a minor, the entire award amount shall be invested in a Fixed Deposit in a Nationalised Bank, till he attains majority. The interest accrued on the said deposit shall be withdrawn by his father, once in three months.
- (vi) No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Motor Accidents Claims Tribunal,
V Judge, Court of Small Causes at Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.
- + 1 cc to M/s. A.N. Viswantha Rao, Advocate Sr.26090
- + 1 cc to M/s. C.R. Krishnamoorthy, Advocate Sr.25779

C.M.A.No.670 of 2018

CP(CO)
EU(28/06/2018)