

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.765 of 2018

Minor.Kalaiselvan

Rep.by his father and natural
guardian Ramakrishnan

..Appellant/Petitioner

Versus

1.Senthil Kumar

(R1 remained exparte before the Tribunal
hence his presence may be dispensed with)

2.The United India Insurance Co.Ltd.,

Divisional Office No.73-C,

MTH Road, 1st Floor,

Ambathur, Chennai - 600 053.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the order and decree dated
11.02.2014 made in M.A.C.T.O.P.No.1 of 2012 on the file of the
Motor Accident Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant

: Mr.M.Malar

For Respondents

: Mr.P.Sankaranarayanan [for R2]
R-1 Ex-parte before Tribunal.

J U D G M E N T

The appellant/petitioner has filed this appeal against the
judgment and decree 11.02.2014 made in M.A.C.T.O.P.No.1 of 2012
on the file of the Motor Accident Claims Tribunal, Subordinate
Judge, Ponneri.

2. For the sake of convenience, the parties are referred to
hereunder according to their litigative status before the
Tribunal.

3. With consent of the learned counsel on either side, the
main Civil Miscellaneous Appeal itself is taken up for final
disposal at the admission stage itself.

4. The case of the minor petitioner/claimant is that on 28.08.2005 at about 22.30 hours, while the petitioner/claimant was proceeding as a passenger in the auto bearing Registration No.TN-07-E-4525, the same, due to applying of sudden brake by the driver to avoid hitting a cow in P.H.Road, Vanagaram, capsized and as a result, the petitioner/claimant suffered multiple grievous injuries. The accident occurred only due to rash and negligent driving by the driver of the said auto. The minor petitioner/claimant was aged 10 years and he was a student at that time and due to the injury suffered he is unable to attend any work including his studies. Hence, the minor petitioner/claimant sought for a sum of Rs.2,00,000/- as compensation from the respondents who are the owner and insurer of the above said auto.

5. Before the Tribunal, the respondents remained ex-parte and did not come forward to contest the matter. The petitioner/claimant examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.7 to prove his claim. On the basis of available evidence let in by the petitioner, the Tribunal found negligence on the part of the 1st respondent-auto driver alone caused the accident and passed an award for a sum of Rs.1,16,500/- payable by the respondents. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the petitioner/claimant contends that due to the injury, the petitioner/claimant suffered 100% disability, but the Tribunal failed to provide proper compensation for the same. Due to the injury suffered, the petitioner/claimant lost his future prospects and as such, the Tribunal ought to have awarded much higher amount. The Tribunal without considering P.W.2 - Doctor evidence properly reduced disability to 45% instead of 55% fixed by the Doctor. The amount awarded under different heads is very nominal. Thus, the petitioner/claimant sought for enhancement of the award amount by allowing the appeal. सत्यमेव जयते

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal considering the available evidence on record passed an award for a sum of Rs.1,16,500/- which itself is on higher side. Further due to non appearance of themselves before the Tribunal, no contra evidence was let in and taking advantage of the same, the petitioner/claimant is now seeking for enhancement of the award amount which lacks merits. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The mother of the minor petitioner/claimant who deposed as P.W.1 stated that on 28.08.2005 at about 22.10 hours, while the petitioner/claimant was going in the auto bearing Registration No.TN-07-E-4525, the said auto suddenly capsized due to application of sudden brake by the driver causing multiple fracture and grievous injuries to the minor petitioner/claimant. The accident occurred only due to the negligence of the driver of the said auto. The police also registered a case against the auto driver as per Ex.P.1 - Copy of the F.I.R. As the respondent remained ex-parte, no contrary evidence was let in to disprove the claim of the petitioner/claimant. As such, it is clear from the oral evidence of P.W.1 and the contents of Ex.P.1 - F.I.R, that the high speed and negligent driving by the driver of the said auto only caused the accident.

10. The minor petitioner/claimant says that he suffered fracture in his right hand and also suffered multiple injury all over his body. The Doctor, who deposed as P.W.2 examined the minor petitioner and stated that the minor petitioner suffered fracture on ulna bone on left elbow and assessed disability at 55%. It is also clear from Ex.P.2-accident register that the minor petitioner suffered fracture and multiple injuries, for which he took treatment in Government Stanley Hospital, Chennai, as inpatient from 12.09.2005 to 19.09.2005. Thereafter, he took treatment on 12.10.2005 and the same is evidenced by Ex.P.4 - Discharge summary. The petitioner/claimant stated that he underwent treatment at Puthur, as evidenced by Ex.P.3 certificate. It is therefore clear that the petitioner/claimant suffered fracture and multiple injuries. However, the Doctor who deposed as P.W.2 and given treatment to him, has not stated as to how he had arrived at the disability percentage as mentioned by him in Ex.P.7 - Disability Certificate. In such circumstances, the Tribunal is justified in reducing the disability fixed by P.W.2 Doctor to 45%. However, considering the factor that the petitioner/claimant suffered grievous injuries and multiple fracture, it will be appropriate to compensate him at a rate of Rs.3000/- per percentage instead of Rs.2000/- as fixed by the Tribunal. Thus, the compensation for permanent disability suffered by the petitioner/claimant is modified as $45 \times \text{Rs.3000} = \text{Rs.1,35,000/-}$.

11. Considering the nature of injury suffered the petitioner/claimant will have long term suffering which will affect his normal activities. Hence, it will be appropriate to award a sum of Rs.25,000/- towards loss of amenities. Considering the nature of injury suffered, the Tribunal has awarded various amounts under different heads as stated below and the same is just and proper. Thus, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Permanent Disability	90,000.00	1,35,000.00
2	Loss of amenities	-	25,000.00
3	Medical Expenses	2,500.00	2,500.00
4	Pain and Suffering	20,000.00	20,000.00
5	Extra Nourishment	2,000.00	2,000.00
6	Transport Charges	2,000.00	2,000.00
7	Total	1,16,500.00	1,86,500.00

12. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.1,86,500/- from Rs.1,16,500/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the entire award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The petitioner is minor, the award amount shall be deposited in any one of the nationalized bank till he attain majority. The guardian of the petitioner is permitted to withdraw the accrued interest once in three months. After attaining the majority, the petitioner is entitled to withdraw the entire award amount by filing appropriate petition before the Tribunal.

(v) Petitioner/appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(vi) In view of the order of this court passed in C.M.P.No.8869 of 2017 in C.M.A.SR.No.41178 of 2017, the petitioner/claimant shall forego interest for the delay period.

No costs.

Sd/-

Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims,
Ponneri.

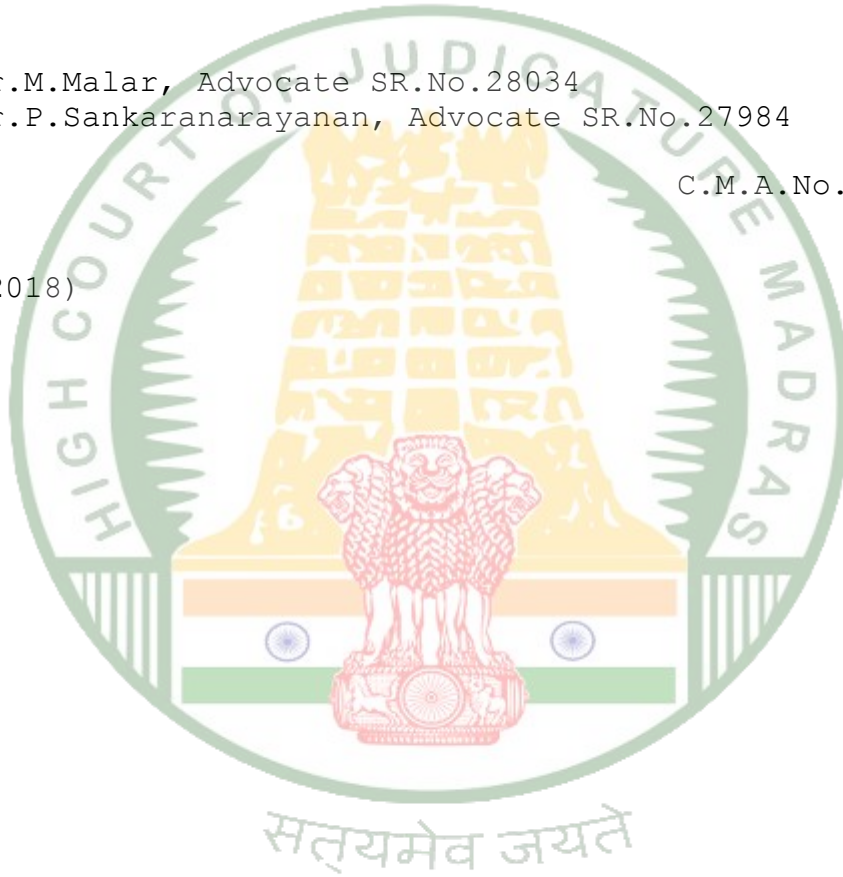
2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.M.Malar, Advocate SR.No.28034

+1cc to Mr.P.Sankaranarayanan, Advocate SR.No.27984

C.M.A.No.765 of 2018

KGK(CO)
GN(19/07/2018)



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