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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM :

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

C.M.A.No.847 of 2018

S.Harishith (minor)
rep. by his father and next friend
Mr.Sudhakar ... Appellant/Petitioner

Vs

1. S.Padmaja
2. Iffco - Tokio General Insurance Co. Ltd.,
Iffco Bhavan, 4th Floor, No.128,
Habibullah Road, T.Nagar,
Chennai - 17 ... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 24.01.2018 made in MCOP.No.3396 of 2015 on the file of the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

For Appellant : M/s. R.Nalliappan

For Respondents : Mr.Perumbulavil Radhakrishnan for R1
Mr.M.B.Raghavan for R2

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

The appellant has preferred the present appeal, aggrieved by the order of Motor Accident Claims Tribunal, II Small Causes Court, Chennai in MCOP No.3396 of 2015 dated 24.01.2018 against the award of Rs.4,80,000/-

2. Heard Mr.R.Nalliapan, the learned counsel appearing for the appellant, Mr.Perumbulavil Radhakrishnan, the learned counsel appearing for the first respondent and Mr.M.B.Raghavan, the learned counsel appearing for the second respondent.

3. The brief facts of the case are as follows:-



3(i). On 17.03.2015 at 11:45 p.m. while the petitioner was walking along Adambakkam Andal Nagar, 1st main road opposite to Varshini flats from South to North direction, at that time, a Van bearing Reg.No.TN-20-BX-1760 came from East to West direction in a rash and negligent manner without following traffic rules and dashed against the minor petitioner. Due to the said accident, the minor petitioner sustained grievous injuries and the left side of the front wheel ran over his left hand. Due to the said accident the petitioner sustained the following injuries:-

"Traumatic Amputation left upper extremity at elbow with crush injury of Arm, Cerebral edema and Multiple facial lacerations and the surgery done as EUA, wound debridement with laceration repair, partial stump closure of amputated left upper limb, skin grafting of stump with face suture removal".

3(ii).The first respondent owner of the vehicle filed her counter stating that the vehicle was well maintained and insured with the second respondent Insurance Company. Further the first respondent stated that the vehicle ownership was transferred prior to the accident, as such the transfer of ownership has been effected from 30.04.2014 whereas the accident took place on 17.03.2015 and hence the first respondent claims that she is not responsible to pay any claim as claimed by the claimant.

3(iii).The second respondent Insurance Company stated that though the ownership of the vehicle was transferred by the first respondent with effect from 30.04.2014, no name change was effected in the policy. Therefore, the second respondent Insurance Company claims that there was no contract of insurance on the date of accident. The Insurance Company also denies that the petitioner sustained grievous injuries and amputation and therefore they are not liable to pay any compensation as claimed.

3(iv).The Tribunal after considering pleadings and evidences both on oral and writing came to the conclusion that the accident occurred due to the negligent driving of the driver of the Van bearing Registration No.TN 20 BX 1760.

3(v).The Tribunal awarded a sum of Rs.4,80,000/- as compensation to the claimant against the claim amount of Rs.54,00,000/- and directed the first and second respondents jointly or separately are liable to pay the compensation to the claimant.

4. Aggrieved by the order of the Tribunal the claimant has preferred the present appeal on the issue of determination of quantum.



5. On behalf of the petitioner, his father was examined as PW1, through him Ex.P1 to Ex.P18 were marked. Disability certificate and FIR copy were marked as Ex.P.15 & Ex.P.16 respectively. FIR also confirms that the vehicle bearing Reg.No.TN-20-BX-1760 was involved in the accident and FIR was registered in Crime No.162/M1/2015 under Section 279 & 338 IPC against the driver of the Eicher Van. Therefore the Tribunal rightly fixed the negligence on the part of the driver of the Eicher Van.

6. Though the first respondent transferred the ownership of the vehicle with effect from 30.04.2014 due to the non effect of the name change, the Tribunal came to the conclusion that the first respondent is responsible jointly with the second respondent, since the first respondent insured the vehicle with the second respondent which was alive as on the date of accident i.e. 17.03.2015. Therefore the Tribunal rightly came to the conclusion that the first and second respondents are liable to pay the compensation to the claimant. We also in concert with the same.

7. Income:- The petitioner was aged about two years at the time of accident. At the age of two years the claimant lost his left hand which is very very important to carry out his essential day today activities and through out his life he needs an assistance and suffer with this disability. Ex.P.15 Disability certificate issued by the Government Peripheral Hospital, K.K.Nagar, Chennai had assessed as Locomotor disability of the petitioner to the tune of 80% permanent. As per the manual for Doctor to evaluate permanent physical impairment for orthopedic surgeons, prepared by American Academy of orthopedic surgeons, the percentage for the injured petitioner is 70%. The Tribunal fixed the disability as 70%. Since the disability was assessed by the Government Doctor as 80%, we fix the disability as 80% and set aside 70% as fixed by the Tribunal.

8. The minor petitioner sustained amputation of over left hand which is an irreparable loss and hence the Tribunal rightly applied the multiplier method for the purpose of determination of loss of earning capacity to the claimant. For the age group between 2 to 15 years, the multiplier to be adopted is "15" as held in the case of Sarla Verma and others Vs.Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC. However, the Tribunal based on the decision of the Hon'ble High Court of Delhi in the case of "Chetan Malhotra Vs. Lala Ram" applied the multiplier as "10" which is not proper. Hence we set aside the multiplier "10" and fix as "15".

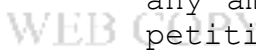


9. Future Prospects:- The Tribunal has failed to consider future prospects. As held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, it is just and necessary to add 40% towards future prospects, since in the present case the petitioner sustained 80% disability. Further he lost his left hand and due to the said loss, it is very difficult for him to do his day today activities and for the age group below 40 years, 40% of future prospects to be taken, therefore we fix the future prospects as 40%.

10. The Tribunal fixed the notional income of the petitioner as Rs.39,000/- per year. The notional income fixed by the Tribunal is very low and the same needs to be revised based on the judgment of the Hon'ble Supreme Court of India in the case of V.Mekala Vs. M.Malathi & another, reported in 2014 (2) TNMAC 6 (SC), wherein the Hon'ble Supreme Court fixed a sum of Rs.15,000/- per month as notional income for a XIth standard minor student for the accident occurred in the year 2005. The same analogy should be applied in the present case also, though the claimant herein was two years old at the time of accident. Since the Hon'ble Supreme Court fixed Rs.15,000/- as notional income for a XIth standard student for the accident occurred during the year 2005, it would be proper to fix the notional income for the claimant herein considering the age and we fix the notional income as Rs.10,000/-. If we add future prospects 40% as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra) the total income would be a sum of Rs.10,000/- + 4,000/- = Rs.14,000/-. As stated above we intend to take disability as 80%. Therefore we fix the loss of earning power as Rs.20,16,000/- (Rs.14,000/- x 12 x 15 x 80%).

11. The Tribunal awarded a sum of Rs.52,219/- towards "medical expenses" since only xerox copies were produced, however, as per Ex.P.11 the claimant claims a sum of Rs.3,14,280/- towards medical bills. The minor petitioner was treated as an in-patient in Appollo Hospital from 17.03.2015 to 23.03.2015. We take into consideration that the petitioner was admitted as an in-patient in the Appollo hospital which is one of the most experienced hospitals in the city and took treatment for 7 days for his left hand amputation. Under that situation the petitioner would have spent considerable amount towards medical bills and we believe that being a two year old child, his parents would have spent liberally to save the child. Under these circumstances, we are inclined to accept those medical bills and award Rs.3,14,280/- towards "medical expenses".

12. Loss of amenities:- The Tribunal failed to award any amount towards "loss of amenities". Definitely, being a two year old child he would have lost happiness considerably. Therefore

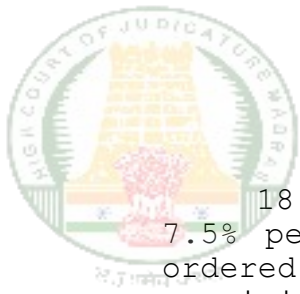


13. Loss of Marital Prospects:- The Tribunal failed to award any amount under the head "loss of marital prospects". When the petitioner had suffered amputation at the age of two years, it is needless to point out that the marriage prospects in the matrimonial market will be bleak. Therefore we inclined to award Rs.2,00,000/- towards "loss of marital prospects".

15. Pain and suffering:- The Tribunal awarded Rs.25,000/-. For a two years old child the pain and suffering would have been a lot and the parents also might have suffered a lot along with the petitioner, therefore we inclined to enhance it to Rs.1,00,000/-.

17. Hence the total compensation payable to the claimant is as hereunder.

Head	Amount
Disability	Rs.20,16,000/-
Loss of marital prospects	Rs.2,00,000/-
Loss of amenities	Rs.3,00,000/-
Pain and suffering	Rs.1,00,000/-
Extra nourishment	Rs.50,000/-
Transport to hospital	Rs.50,000/-
Attender charges	Rs. 20,000/-
Medical expenses	Rs.3,14,280/-
Future Medical Expenses	Rs.1,50,000/-
Total	Rs.32,00,280/-



18. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. The appellant is directed to pay the requisite court fee if any, within a period of two weeks from the date of receipt of a copy of this order.

19. The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall deposit Rs.12,00,280/- to the claimant's account and the balance amount of Rs. 20,00,000/- shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till the minor attains majority. The father of the appellant is permitted to withdraw the quarterly interest from the said deposit.

20. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.4,80,000/- is enhanced to Rs.32,00,280/-. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

dpq

To

1. The Motor Accidents Claims Tribunal
(II Small Causes Court), Chennai.
2. The Section Officer, V.R Section,
High Court, Madras (2 Copies)

+1cc to Mr.R.Nalliyappan, Advocate SR.No.52732

+1cc to Mr.M.B.Gopalan, Advocate SR.No.54139

C.M.A.No.847 of 2018

BR(CO)

GMV(06/12/2018)