

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.12.2017
Pronounced on	09.04.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.697 of 2006

Sathish (Minor) represented by
father and next friend Mohan,
No.6/2, Annie Besant Street,
Vijayalakshmipuram,
Chennai - 53.Appellant

Vs

1. A. Victor Rajaiah,
No.9/112, E, Kings Cottage,
Solaiseri Karunvanthur,
Thenkasi
(1st respondent called absent
set exparte in trial court)
2. The New India Assurance Co.
Ltd.,
Motor III Party Claims Office,
No.45, Moore Street,
Chennai-1.Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2005 made in M.C.O.P.No.402 of 2003, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-III, Poonamallee.

For Appellant : Mr.J. Mahalingam

For Respondents: Mrs. R. Sreevidhya for R2
R1-set exparte before tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimant/appellant herein against the award and decree passed in M.C.O.P.No.402 of 2003 on the file of Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-III, Poonamallee for enhancement of compensation.

2.The brief facts of the claim petition is as follows;

(i) On 23.12.2002 at 4.30 p.m., when the claimant, who is a minor, aged 12 years, was walking along with his father in the Saidapet by the western side of Anna Salai, Saidapet from south to North, a van bearing Registration No.TN-59-H-1212, belongs to the 1st respondent and insured with the 2nd respondent Insurance Company, driven by its driver in a rash and negligent manner, which was proceeding in the same direction, dashed against the claimant, as a result of which, he sustained fracture injury on his right thigh bone and also severe injuries all over the body. Initially he was given treatment at Chennai Government Hospital and further treated as inpatient at Government Royapettah Hospital.

(iii) A claim petition was filed before the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-III, Poonamallee by the injured minor claimant, represented by his father claiming compensation of Rs 3,00,000/-.

(iv) Resisting the same, the 2nd respondent Insurance Company has filed a detailed counter disputing the negligence, manner of the accident, injuries sustained and also on the ground that the claim petition was filed after a lapse of 2 ½ years from the date of accident.

(v) On the side of the claimant, his father was examined as PW1 and Dr. Sai Chandran was examined as PW2 and Ex.P.1 to Ex.P.6 were marked as documents. On the side of the respondent Insurance Company, neither a witness was examined, nor a document was marked.

(vi) The tribunal after examining the witnesses and assessing the documents relied before it, awarded an amount of Rs.53,000/- as total compensation under various heads together with interest at the rate of 9% from the date of petition till the date of realisation. The details of compensation awarded under various heads is furnished below;

Disability	Rs.30,000/-
Pain and Suffering	Rs.20,000/-
Extra Nourishment and transportation	Rs.03,000/-
Total	Rs.53,000/-

3. Aggrieved against the award passed by the tribunal, the claimant as appellant, has preferred the present Civil Miscellaneous Appeal claiming enhanced compensation.

The appellant has raised the following grounds in the appeal;

(i) the tribunal has not considered the injuries sustained by the minor claimant which includes serious head injury and fracture in the right femur bone and grievous injuries all over the body.

(ii) The period of treatment underwent by the minor claimant in various hospitals for a prolonged period as out patient is not considered by the tribunal.

(iv) The claimant, being a student is suffering from illness of headache and oozing out of water from his eyes while studying because of the injury sustained by him on his head. The memory power of the injured also got affected due to the injury sustained out of the accident.

(v) The further grievance of the claimant is that the tribunal has not considered the continuing or permanent disability of the injured and no amount has been awarded under such head even though PW2 had examined and assessed the disability and issued Ex.P.4 disability certificate.

(vi) the sum awarded for pain and suffering at Rs.20,000/- is also very meagre. Further no amount has been awarded by the tribunal for damages to compensate for the loss of amenities, damages for mental agony, hardship, inconvenience and discomfort suffered by the claimant.

(vii) Though the claimant restricted his claim from 11,25,000/- to Rs.3,00,000/- the tribunal has awarded only an amount of Rs.53,000/- as total compensation which is very much meagre and unsustainable in law when compared to the injuries sustained by the minor claimant who was a student. Therefore, the appellant prayed for enhancement of the Award amount.

4. Considered the rival submissions made on both sides and perused the materials available on record.

5. On perusal of records, it is observed that the injured person is a minor and the vehicle that hit against the minor is a van. An FIR and charge sheet has also been registered against the driver of the van. PW1 who is the father of the injured person has deposed that his minor son sustained injury all over his body Ex.P.2 is the discharge summary which reveals the injuries sustained by the minor claimant. It is also observed that the injured minor claimant has undergone treatment from 24.12.2000 to 5.1.2001 and the nature of injuries sustained by him was clearly spoken by PW2, who assessed the disability

at 30%.

6. It is the evidence of PW2 who has stated that the movement of the muscles in the right side hip has been reduced to 30 degree and this causes difficulty for the injured during walking and playing. It is also observed that for the injury of fracture, the claimant underwent surgery. Though no document has been filed evidencing medical expenses incurred, considering the probable expenses that could have been normally incurred by a person for medical treatment, the amount awarded by the tribunal towards pain and sufferings is hereby enhanced from Rs.20,000/- to Rs.30,000/-. Apart from that the amount already awarded for transportation and nourishment is hereby enhanced from Rs.3,000/- to Rs.5,000/-

7. Further on perusal of the award, it is observed that no amount has been awarded for the mental agony and discomfort suffered by the claimant. Hence a sum of Rs.15,000/- is awarded towards discomfort and inconvenience suffered by the injured claimant.

8. The modified compensation awarded by this court under various heads is tabulated below;

Permanent disability	Rs.30,000/-
Pain and sufferings	Rs.30,000/-
For transport and nourishment	Rs.05,000/-
Discomfort and inconvenience caused	Rs.15,000/-
Total	Rs.80,000/-

9. This Court enhances the compensation awarded by the Tribunal from Rs.53,000/- to Rs.80,000/- along with interest awarded by the Tribunal.

10. In fine,

- the appeal is partly allowed.
- The compensation awarded by the Tribunal is enhanced by this Court from Rs.53,000/- to Rs.80,000/- along with interest awarded by the Tribunal.
- The 2nd respondent/Insurance Company is directed to deposit the compensation awarded by this Court together with interest awarded by the Tribunal along with proportionate costs, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of

this order in any one of the Nationalised Banks till he attains majority and the 1st claimant/father of the minor is entitled to receive the interest on the said amount once in three months.

- No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

msr

To

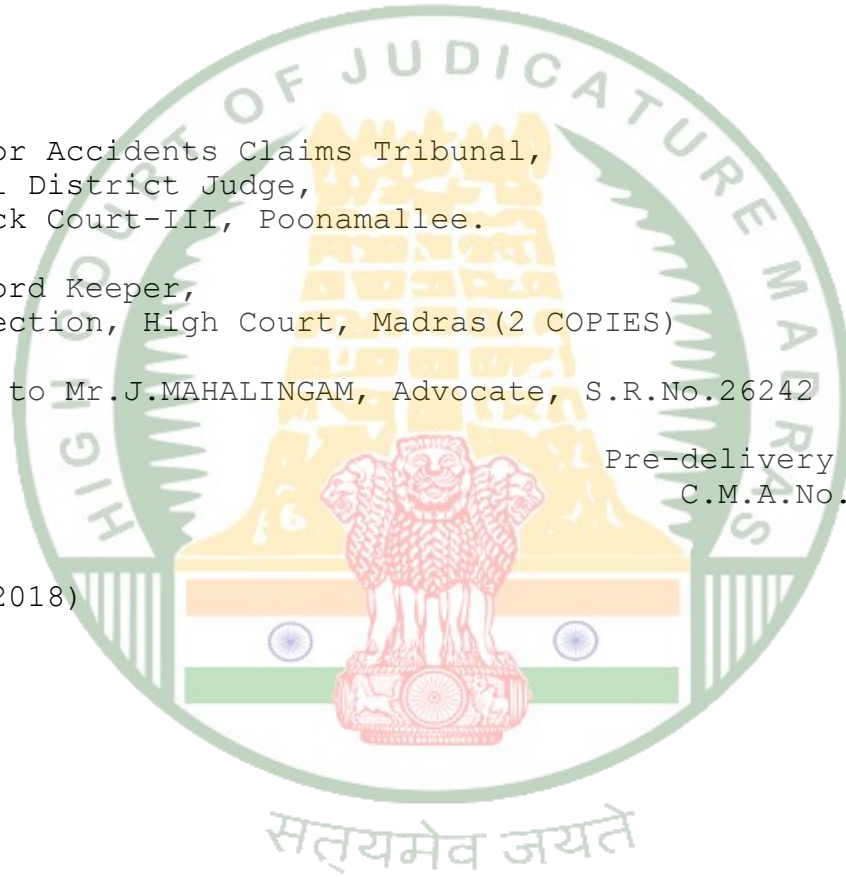
1.The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court-III, Poonamallee.

2 The Record Keeper,
V.R.Section, High Court, Madras (2 COPIES)

+2cc to Mr.J.MAHALINGAM, Advocate, S.R.No.26242

Pre-delivery judgment in
C.M.A.No.697 of 2008

CP (CO)
TR(23/05/2018)



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