

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 23.08.2018

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1207 of 2017

Minor Prakash
(Minor Petitioner represented through
his Guardian/Father Ramalingam) ...Petitioner/Appellant

Vs.

1.Abdul Khader
2.The Branch Manager,
Oriental Insurance Co. Ltd.,
East Rajaveethi,
Pudukkottai.
(R1 Exparte in the trial Court,
hence dispensed with) ...Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.26 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge/FTC), Pudukkottai dated 26.03.2008.

For Appellant: Mr.P.Ganapathi Subramanian
For R2 : Mr.C.Ramachandran in SR Stage

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-claimant against the award, dated 26.03.2008, made in M.C.O.P.No.26 of 2007, passed by the Motor Accident Claims Tribunal (Additional District Judge/FTC), Pudukkottai.

2.The appellant, who was aged about 7 years at the time of accident, filed a claim petition represented by his father in M.C.O.P.No.26 of 2007 before the Motor Accident Claims Tribunal (Additional District Judge/FTC), Pudukkottai, claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) for the injuries suffered by him in the accident that occurred on 07.03.2004.

3.Facts of the Case:

According to the appellant, on 07.03.2004 at 10.30 p.m., at Pudukkottai to Trichy main road E.B.Bus Stop due to rash and negligent driving by driver of the Ambassador Car bearing Registration No.T.M.F.6489 belonging to the first respondent, the accident occurred. The appellant sustained grievous injuries all over the body. He took treatment at Government Head Quarters Hospital, Keeranur, Government Head Quarters Hospital, Pudukkottai and then Thanjavur Medical College Hospital till 16.03.2004 as Inpatient and subsequently, he was taking treatment in a Private Hospital at Thanjavur. Even at the time of filing of the claim petition, the appellant was taking treatment at Thanjavur Medical College Hospital. He was aged about 7 years at the time of accident and he was studying II Standard. Due to the accident, he was not able to concentrate in his studies and he lost his memories and claimed a sum of Rs.10,00,000/- as compensation.

4. The first respondent remained ex-parte before the Tribunal.

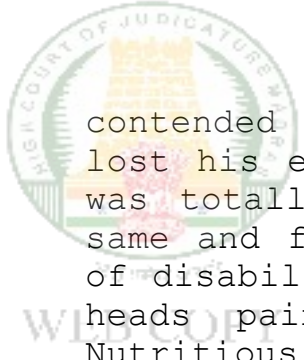
5.The second respondent filed counter statement and denied the manner in which the accident occurred. According to the second respondent, the vehicle was driven slowly and carefully. The appellant suddenly crossed the road and therefore, he is only responsible for the accident. The vehicle belonging to the first respondent was not insured with the second respondent. The driver of the vehicle did not possess the valid driving licence and in any event, the amount claimed is excessive.

6. Before the Tribunal, on behalf of the appellant, three witnesses were examined as P.W.1 to P.W.3 and 11 documents were marked as Ex.A1 to Ex.A11. The respondents did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the learned Counsel for the appellant/claimant, came to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the Ambassador Car belonging to the first respondent and awarded a sum of Rs.52,600/- as compensation.

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal for enhancement of compensation.

9.The learned Counsel appearing for the appellant/claimant



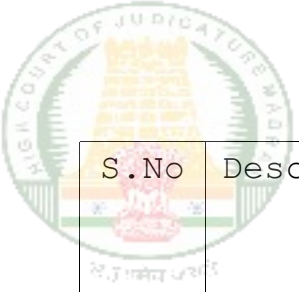
contended that due to the head injury suffered by the minor, he lost his eye vision and memory power. His entire nervous system was totally affected. The Tribunal failed to take note of the same and failed to award a sum of Rs.2,000/- for each percentage of disability. The Tribunal failed to award any amount under the heads pain and suffering, attendant charges, Transportation, Nutritious food, Loss of amenities and future medical expenses. The appellant/claimant also spent considerable amount for his medical expenses and prayed for enhancement of compensation.

10. The learned counsel appearing for the second respondent contended that the Tribunal has considered all the materials on record and has awarded just compensation and hence, he prays for the dismissal of the Civil Miscellaneous Appeal.

11. I have heard the learned Counsel appearing for the appellant/claimant and the learned Counsel appearing for the second respondent and perused all the materials available on record.

12. From the materials available on record, it is seen that the appellant/claimant was taking treatment as Inpatient from 07.03.2004 to 16.03.2004. The Tribunal has not awarded any amount towards pain and suffering, attendant charges and nutritious food. After the accident, the minor was taking treatment at Government Head Quarters Hospital, Keeranur, Government Hospital, Pudukkottai and then at Government Medical College Hospital, Thanjavur. No amount was given for transportation. The Tribunal has not granted any amount towards loss of amenities and for future medical expenses. P.W.2 doctor in his evidence stated that due to head injury, the minor affected with double vision and reduction in memory power. No sensation in the place of scar and head and become shy in nature. The Tribunal has not granted any amount towards future medical expenses. The amount awarded by the Tribunal is too meager and has to be enhanced. The Tribunal took only a sum of Rs.1,000/- (Rupees Thousand Only) for 1% of permanent disability and this Court is of the view that a sum of Rs.2,000/- (Rupees Two Thousand Only) should be taken for 1% permanent disability as per the Judgments of the Honourable Supreme Court and this Court. Accordingly, the appellant-claimant is entitled to a sum of **Rs.72,000/-** (Rupees Seventy Two Thousand only) (Rs.2,000 X 36%) towards permanent disability.

13. In view of the settled position of law, this Court <https://hmcivils.courts.gov.in/hcservices> overruled the order of the Tribunal by enhancing the compensation, as under:-



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For 36% disability	36,000	72,000	enhanced
2.	For Transportation		10,000	awarded
3.	Pain and sufferings		25,000	awarded
4.	Extra Nourishment		10,000	awarded
5.	Attendant charges		5,000	awarded
6.	Future medical expenses	-	10,000	awarded
7.	Loss of amenities		25,000	awarded
8.	Future expenses	15,000	15,000	Confirmed
9.	For Medical expenses	1,600	1,600	Confirmed
	Total	Rs.52,600	Rs.1,73,600	By enhancing a sum of Rs.1,21,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.52,600/- (Rupees Fifty Two Thousand and Six Hundred only) to a sum of **Rs.1,73,600/-** (Rupees One Lakhs Seventy Three Thousand Six Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent-Insurance Company is directed to deposit the entire enhanced award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.26 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Pudukkottai within a period of **eight weeks** from the date of receipt of a copy



of this judgment;

(iii) The appellant-claimant is directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

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(iv) The appellant/claimant was minor on the date of filing of the claim petition in 2007 and now, he would have attained majority. Hence, he is permitted to withdraw the entire enhanced award amount with interest by making necessary application before the Tribunal, discharging guardianship. No costs.

Sd/-

Assistant Registrar (WRITS)

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Sub Assistant Registrar (CS-II)

To

1.The Motor Accidents Claims Tribunal,
(Additional District Judge),
Pudukkottai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+ 1 CC TO MR.P.GANAPATHI SUBRAMANIAN, ADVOCATE IN SR NO.80106

AM

BU/SKN/SAR-II : 04.10.2018 : 5P/5C

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