

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

Reserved on : 10.07.2018

Pronounced on : 09.08.2018

CORAM**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A. (MD) No. 658 of 2014**

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Minor S.Vishnupriya @ Priya ... Appellant/Petitioner
[Rep. through her mother and next friend T.Booma]

Vs.

1. A.Kennady
2. ICICI Lombard General Insurance Co. Ltd.,
Rep. by its Manager,
7.A.A.Road,
Gnanaolivupuram,
Madurai.

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.1252 of 2008, dated 06.01.2014, on the file of Motor Accidents Claim Tribunal, IV Additional Subordinate Judge, Madurai.

For Appellant : Mr.C.Godwin

For Respondents : Mr.K.K.Ramakrishnan for R.2

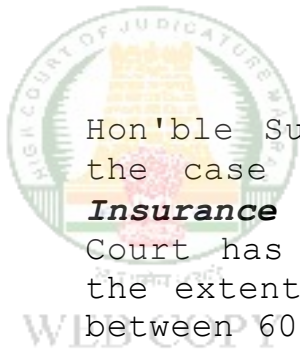
JUDGMENT

Assailing over the judgment passed by the learned IV Additional Subordinate Judge, Motor Accident Claims Tribunal, Madurai, in M.C.O.P.No.1252 of 2008, dated 06.01.2014, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of injury. The Tribunal, after considering all the stated facts and circumstances, has awarded a sum of Rs.3,80,942/-. Being dissatisfied with the same, the appellant has preferred the instant civil miscellaneous appeal, seeking enhancement.

4. The learned Counsel for the appellant would submit that the appellant was about two years old at the time of accident, for whom, the best part of life is yet to come. Because of the accident, the appellant sustained several injuries, which are all grievous in nature. But, the Tribunal, in an unfair means, has awarded a very meagre sum as compensation and therefore, he prays for enhancement, by placing reliance upon the decision of the



Hon'ble Supreme Court, reported in **2013 (2) TANMAC 338 (SC)**, in the case of **Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., and another**, wherein, the Hon'ble Supreme Court has held that non-pecuniary damages have to be awarded to the extent of Rs.5,00,000/- for permanent disability in the range between 60% - 90%.

5. Perusal of record shows that in consequence to the accident, the appellant took treatment as Inpatient for about a month, for which, discharge summary was marked as Ex.P6. It is also seen from the records that the appellant sustained right basal ganglionic ICH with diffuse cerebral injury. PW4 - Doctor, who examined the appellant, has categorically deposed that due to the accident, there is a fracture in right parietal bone, because of which, there is a restriction of movement of the right hand and right leg with incomprehensive speech. Thereby, PW4 has assessed 62% partial permanent disability. However, the Tribunal, on its own, reduced the disability as 57%, which is not agreeable, as the opinion of expert cannot be found fault with unless evidence contrary thereto is adduced. In the present case, no such evidence was let-in. Therefore, this Court re-fixes the disability at 62%. It is also seen that for the said 57% disability, the Tribunal has awarded a sum of Rs.2,000/- per percentage, which, in the opinion of this Court, is also totally unjust.

6. The appellant / victim was just a two years old baby at the time of accident and the best part of her life is yet to come, as rightly contended by the appellant Counsel. In the judgment (**Master Mallikarjun's** case) relied upon by the learned Counsel for the appellant, the Hon'ble Supreme Court has held that while considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act, which indicates that for non-earning persons, the notional income can be taken as Rs.15,000/- per year. The reason is that for children, there is no income and moreover, they cannot be equated to a non-earning person. Therefore, compensation has to be worked out under non-pecuniary heads, in addition to the actual amounts incurred for treatment done / to be done, transportation, assistance of attendant, etc.

7. Resultantly, the Hon'ble Supreme Court, after considering several celebrated judgments, has arrived at a conclusion that it would be appropriate to award Rs.5,00,000/- for permanent disability above 60% and upto 90%. Since, in the case on hand, 62% partial permanent disability is assessed, this Court, considering the age of the child and taking note of her future, awards Rs.5,00,000/- towards non-pecuniary damages. Since loss towards non-pecuniary damages has been awarded, loss of amenities; pain and suffering, and loss towards partial permanent disability awarded by the Tribunal stand deleted.

8. Other than these three heads, the Tribunal has awarded a decent sum towards extra nourishment and medical expenses, which is reasonable and moreover, they are not in dispute. Hence, the same stands confirmed. In addition to the above, Rs.1000/- was awarded towards transportation, which, in the opinion of this Court, is very meagre and therefore, Rs.5,000/- is fixed towards transportation. It is seen that for the nature of injuries sustained by the appellant, future medical care is just and necessary, however, no compensation was awarded under that head. Therefore, this Court fixes a sum of Rs.50,000/- towards future medical expenses.

9. In result, the award of the Tribunal stands modified and the same reads thus:

S.N o	Head	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Difference (Rs.)
1	Non-Pecuniary Damages (loss of amenities, pain and suffering, partial permanent disability)	1,49,000/-	5,00,000/-	(+) 3,51,000/-
2	Extra nourishment	10,000/-	10,000/-	NIL
3	Medical Expenses	2,20,942/-	2,20,942/-	NIL
4	Transportation	1,000/-	5,000/-	(+) 4,000/-
5	Future Medical Expenses	NIL	50,000/-	(+) 50,000/-
6	Total	3,80,942/-	7,85,942/-	(+) 4,05,000/-

10. Though the appellant has claimed Rs.5,00,000/- in the claim petition, this Court is inclined to grant a sum of Rs.7,85,940/- (~Rs.7,85,942/-), by considering the affliction as well as the well being of the child. This Court has got jurisdiction and power under Order 41 Rule 33 read with Section 151 CPC, Section 173 of the Motor Vehicles Act and under Article 227 of the Constitution of India to award more compensation, if the facts of the case warrant, which is a settled position in law.

11. Therefore, this Court has no hesitation in awarding more than what was claimed by the appellant. Accordingly, a sum of Rs.7,85,940/- is awarded as compensation.



12. In result, this civil miscellaneous appeal stands partly allowed with the following directions:

- The second respondent / Insurance Company is directed to deposit the entire award amount, being Rs.7,85,940/- [Rupees Seven Lakh Eighty Five Thousand Nine Hundred and Forty only], with interest @ 7.5% from the date of petition till the date of deposit and costs, less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment;
 - Since the appellant / claimant is a minor child, the Tribunal is directed to deposit the entire amount, to be deposited by the second respondent / Insurance Company, in any one of the Nationalized Banks in a fixed deposit initially for a period of three years and the same shall be auto-renewed once in three years, until the minor attains majority;
 - The mother of the appellant, who is her natural guardian, is permitted to withdraw the interest once in three months directly from the Bank and shall utilize the same for the welfare of the appellant;
 - The appellant / claimant is directed to pay the necessary additional Court fee within a period of two weeks from the date of receipt of a copy of this judgment.
- However, There shall be no order as to costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The IV Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy to

The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.Godwin, Advocate Sr.No.77828

+1cc to Mr.K.K.Ramakrishnan, Advocate Sr.No.77684

GK

VB/RP/SAR3/11.09.2018/4P/6C