



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.06.2019
CORAM:
THE HON'BLE MR.JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.2612 of 2006

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Minor. Sivaraman
Rep. by its father / guardian,
Balasubramanian ... Appellant /Petitioner

Vs

1. N.Kumar
2. The New India Assurance Co. Ltd.,
Divisional Office,
Jawaharlal Nehru Street,
Pondicherry ... Respondents /Respondents
owner of the vehicle & insured

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the decree and Judgment, dated 04.06.2004 made in M.C.O.P.No.142 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore.

For Appellant : Mr. N.Damodaran
For Respondents: Mr. N.Vijayaraghavan, for R-2.

J U D G M E N T

The claimant, Minor. Sivaraman, a student, met with an accident, on 20.08.2000 while he was riding his bicycle. In respect of the injuries sustained in the said accident, the claimant filed a claim petition for a sum of Rs.3,00,000/- as compensation. The Tribunal has passed an award for a sum of Rs.61,423/- under the following breakup details:-

Medical expenses	- Rs.19,423.00
Injuries	- Rs.30,000.00
Future Medical expenses	- Rs.10,000.00
Pain and sufferings	- Rs. 2,000.00

	Rs.61,423.00

2. The learned counsel for the appellant / claimant would submit that, when there is a disability certificate issued by P.W.3-Doctor to the effect that the claimant has suffered 30% disability due to the accident, the entire claim as made in the



claim petition, ought to have been allowed by the Claims Tribunal; the compensation awarded by the Tribunal is too low and it needs enhancement. The alternative contention is that, considering the fractures suffered by the claimant, the Tribunal should have considered the corresponding increase with reference to the loss of enjoyment of amenities, pain and sufferings and medical expenses.

3. On the other hand, the learned counsel for the second respondent / Insurance Company submitted that the accident had occurred only due to the carelessness and negligence on the part of the claimant and the vehicle driver could not avoid the accident, inspite of his best efforts; in fact, the claimant himself invited the accident; when the fact stood thus, the Tribunal eschewed the same and granted the compensation at Rs.61,423/-, which should be set-aside.

4. This Court considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

5. It is relevant to point out that P.W.2-Doctor has assessed the disability at 30%, by noting down the following discomforts on the claimant / appellant:-

- i) Pain and limping;
- ii) great toe and 2nd toe stiff and no plantar flexion present;
- iii) widening of 1st web space present left flit;
- iv) ugly scar in left foot;
- v) cycling difficult;
- vi) extensor tendon cut dorsal aspect of 1st toe.

6. Further, Ex.P-3-accident register copy issued by the Government Hospital, Cuddalore, contains the description of the following injuries sustained by the claimant / appellant :-

1. Lacerated injury 8x0.5x0.5 cm - middle aspect of left foot.
2. Contusion on left foot.
3. Lacerated injury 4x1x0.5 cm dorsal of foot (L).

7. This Court is of the view that it is not only the percentage of physical disablement but also the consequences of physical disablement has to be considered especially which reflects in the functional disablement of the injured. The possible functional disablement as alleged by the claimant is supported by the evidence of the Doctor. The Tribunal has awarded only a sum of Rs.30,000/-, Rs.10,000/- and Rs.2,000/- towards injuries, future medical expenses and pain and sufferings, which in the considered view of this Court, need



sufficient enhancement on those counts. Hence towards those counts, sums of Rs.50,000/-, Rs.20,000/- and Rs.10,000/-, respectively, are awarded.

4. The next issue to be considered is, with reference to the loss of future prospects, attender charges, transportation expenses, damage to cloths / personal materials and loss of expectation of life (shortening of normal longevity).

5. It is the case of the claimant and accepted version of the Tribunal that the accident had occurred on 20.08.2000; that the injured was hospitalized immediately; that the surgery was also performed immediately; that he was discharged on 06.09.2000; that P.W.3-Doctor has issued disability certificate and the injured was at the tender age of 13 only, at the time of accident and that he was a student.

6. All the above are considered and proved by evidence and documents on record. Hence this Court is of the view that towards the loss of future prospects, attender charges, transportation expenses, damage to cloths / personal materials and loss of expectation of life (shortening of normal longevity) at least some amount ought to have been awarded by the Tribunal. Hence towards the loss of future prospects a sum of Rs.10,000/- is awarded, towards attendant charges a sum of Rs.2,000/- is awarded, towards transportation expenses a sum of Rs.2,000/- is awarded, towards extra nourishment a sum of Rs.3,000/- is awarded, towards damage to cloths / personal materials a sum of Rs.5,000/- is awarded and towards loss of expectation of life (shortening of normal longevity) a sum of Rs.40,000/- is awarded, since the claimant has to lead rest of his life with the said discomforts.

7. Thus the compensation awarded by the Claims Tribunal is re-structured and the compensation is passed under the following appropriate heads:-

Head	Amount in INR
Medical expenses already incurred.	19,423/-
Future medical expenses	20,000/-
Loss to article	5,000/-
Extra nourishment	3,000/-
Transport expenses	2,000/-
Injuries (disability suffered)	50,000/-
Cost of attendant	2,000/-
Pain and sufferings	10,000/-



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Head	Amount in INR
Loss of future prospects	10,000/-
Loss of expectation of life	40,000/-
Total	1,61,423/-

8. In the result, the Civil Miscellaneous Appeal is partly-allowed, by enhancing the quantum of compensation from Rs.61,423/- to Rs.1,61,423/-, which is payable with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit. No costs. Consequently, the connected MP is closed.

9. The compensation amount, as determined by this Court, shall be deposited by the Insurance Company, less the amount already deposited, if any, along with interest at 7.5% per annum, from the date of petition, till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. The Insurance Company is not liable to pay any interest on the compensation amount, in respect of the default period, for which, condonation of delay has been ordered. On such deposit being made, the Tribunal shall transfer the compensation amount to the savings bank of the claimant, through RTGS, within one week thereafter. The claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

-Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

srk
To
1. Motor Accident Claims Tribunal,
Chief Judicial Magistrate Cuddalore.

copy to:

The Section Officer, V.R.Section,
Madras High Court,
Chennai - 104



+1 cc to M/s.N.Damodaran Advocate sr 50993
+1 cc to M/s.M.B.Gopalan Advocate sr51492

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C.M.A.No.2612 of 2006

mr (co)
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