

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1128 of 2013

Nandhini (Minor) ... Appellant/Claimant
(Minor Represented by her mother
and next friend Unnamalai)

vs.

1. Balakrishnan

2. ICICI Lombard General Insurance Company Limited,
No.84/85, Waltex Road,
Park Town,
Chennai-600 003.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 28.03.2012 made in M.A.C.T.O.P.No.3050 of 2009 on the file of the Motor Accidents Claims Tribunal / V Court of Small Causes, Chennai.

For Appellant : Ms.A. Subadra
for Mrs.M.Malar

For Respondent : Mrs.R.Sreevidhya for R2
R1- Exparte

JUDGMENT

The appellant is the claimant in M.A.C.T.O.P.No.3050 of 2009 on the file of the Motor Accident Claims Tribunal / V Court of Small Causes, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the MACT Rules seeking compensation of Rs.2,50,000/- for the injuries sustained by her in a road accident on 11.10.2008.

2. The case of the claimant is that on 11.10.2008, at about 8.45 hours when the claimant was a pedestrian on Olakkur Old Police Quarters Road, near Anjaneyar temple, Tindivanam, a speeding Tata Ace Van bearing Registration No.TN-07-AQ-1390 hit her, as a result which, the claimant sustained grievous injuries all over her body.

3. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the Tata Ace Van bearing Registration No.TN-07-AQ-1390 belonging to the first respondent and that since the said car was insured with the second respondent, the owner and the insurer of the car are jointly and severally liable to pay compensation.

4. The learned Motor Accident Claims Tribunal / V Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,72,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mrs.M.Malar, learned counsel appearing for the appellant / claimant contended that the claimant was aged 12 years on the date of accident and as per the decision in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., & another reported in 2013 (2) TN MAC 338 (SC), a consolidated sum of Rs.3,00,000/- should be awarded, especially when Dr.J.T.R.R.Thiagarajan (PW2) had assessed the partial permanent disability suffered by her as 65%. She therefore prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent / Insurance Company contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.1,72,000/- and therefore, the same need not be disturbed at this stage.

7. A perusal of the discharge summary-Ex.P2 shows that the claimant has sustained ''fracture of right femur and contusion on mid brain with haematoma''. It is also seen that the claimant was admitted as an inpatient on 24.12.2008 and discharged on 13.02.2009.

8. In paragraph Nos. 8 and 12 of the decision in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., & another reported in 2013 (2) TN MAC 338 (SC), it has been held thus:-

8. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D.Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd. And others [1], while

assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. 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 for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional

circumstances to take different yardstick."

9. In the instant case, Dr.J.R.R.Thiagarajan (PW2) had assessed the partial permanent disability suffered by the claimant as 60% and the same has to be reduced to 30% in respect of whole body disability. In the facts and circumstances, a sum of Rs.3,00,000/- is awarded for the injuries sustained by the claimant as per the decision laid down in Master Mallikarjun's case (cited supra). The various heads under which the award is passed is extracted hereunder:

Head	Compensation Amount
Pain and Suffering already undergone and to be suffered in future, Mental and Physical Shock, Hardship, Inconvenience, and Discomforts, etc., and Loss of Amenities in Life on account of Permanent Disability.	Rs.3,00,000 /-
Discomfort, Inconvenience and Loss of Earnings to the parents during the period of Hospitalisation.	Rs.25,00 0/-
Medical and Incidental Expenses during the period of Hospitalisation.	Rs.1,262/-
Future Medical Expenses	Rs.10,000 /-
Total	Rs.3,36,262/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,72,000/- to Rs.3,36,262/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,72,000/- to Rs.3,36,262/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the

Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The respondent / ICICI Lombard General Insurance Company Limited, is directed to deposit the entire compensation amount i.e., Rs.3,36,262/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3050 of 2009 on the file of the Motor Accident Claims Tribunal / V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1 CC to Mrs.M.Malar, Advocate sr 94174

C.M.A.No.1128 of 2013

VBA(CO)
SP(05/03/2020)