

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1097 of 2011

Baby(minor)
rep.by next friend and Natural
guardian father Mohanasundaram
Ramapattinam
Sivnmalai Village,
Kangayam Taluk,
Erode District.

... Appellant

Versus

1.S. Saminathan

2.United India Insurance Company Ltd.,
SNS Complex, Near Telephone Exchange,
L.B. Road, Adayar,
Chennai - 600 020.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Award dated 13.07.2010 passed in M.C.O.P.No.135 of 2008, on the file of the Motor Accident Claims Tribunal (I Additional Sub Court) Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents: Not ready in notice (for R1)

: Mr.T. Ravichandran (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant for enhancement of compensation granted vide award dated 13.07.2010 passed in M.C.O.P.No.135 of 2008, on the file of the Motor Accident Claims Tribunal (I Additional Sub Court) Erode.

2.It is the case of the appellant/claimant that on 30.09.2007 at about 3.00 p.m, when she was riding the Motor Cycle bearing Registration No.TN-33-AW-0048 on 30.09.2007 from

Chennimalai to Chillangettuvalasu forest road, near Kuttaikadu thottam a lorry bearing Registration No. TN-33-E-2889 came in the opposite direction at a very high speed in a rash and negligent manner and dashed against the petitioner. As a result, the claimant sustained grievous injuries with fracture on her left leg, hand, spine and pelvis. She was taken treatment to KMCH, Erode, for treatment and thereafter, she was shifted to Ganga Hospital, Coimbatore, where she has taken intensive treatment by undergoing three surgeries. Due to the said accident, she is unable to do her work, which she was doing before the accident. The claimant was aged 16 years at that time of accident and was working as a Tailor and earning a sum of Rs.6,000/- per month. Therefore, the claimant filed the claim petition in M.C.O.P.No.135 of 2008, before the Tribunal claiming a sum of Rs.15,40,000/- as compensation, which was restricted to Rs.15,00,000/-.

3.The claim petition was resisted by the Insurance company by contending that at the time of accident, the claimant did not possess a valid and effective driving licence and that, she was only aged 16 years, which is a violation of policy condition and, therefore, they cannot be fastened with any liability to pay compensation to the claimant.

4.Before the Tribunal, on the side of the claimants, the father of the claimant examined himself as P.W.1, one witness Velusamy was examined as PW.2 besides examining two Doctors, Dr.Roy willson Amstrong and Dr.R./Senthilkumar, who were examined as PW.3 and PW.4. and Nineteen documents were marked as Ex's.P1 to Ex.P19. On the side of the respondents, the Assistant Manager of the Insurance Company, was examined as R.W.1 and three documents were marked as Ex.R1 to Ex.R3.

5.After going through the oral and documentary evidence adduced before it, the Tribunal came to the conclusion that the claimant was injured, due to rash and negligent manner of driving by the driver of the first respondent's vehicle. Accordingly, the Tribunal awarded a sum of Rs.3,00,000/- as compensation and fixed the liability jointly and severally on the first and second respondents to pay the compensation. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

6.Similar contentions as were raised before the Tribunal has been raised before this Court as well. This Court heard both sides and perused the materials available on record.

7.After hearing the submissions made by the both counsel, this Court does not want to interfere with the compensation awarded at this stage. It is clear from the documents available on record i.e., Ex.P7 to Ex.P13, issued by PW.4/Dr.Senthilkumar, the Tribunal has come to the conclusion and fixed the claimant's disability at the rate of 40% and accordingly awarded a sum of

Rs.80,000/-, which this Court feels, it is fair and reasonable. After analysing the oral and documentary evidence, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.3,00,000/- as compensation.

8.Considering the period of treatment taken by the claimant, the amount awarded towards Pain and Suffering should be quantified at Rs.30,000/- & Transport charges and Extra-nourishment at Rs.20,000/-. The Tribunal did not award any amount towards attendant charges and therefore, a sum of Rs.10,000/- is awarded to the claimant. Consequently, the total amount of compensation of Rs.3,00,000/- awarded by the Tribunal is hereby enhanced to Rs.3,40,000/-. The break-up details of the award amount is as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Pain and suffering	Rs.10,000/-	Rs.30,000/-
Transport expenses and Extra-nourishment	Rs.10,000/-	Rs.20,000/-
Medical expenses	Rs.2,00,000/-	Rs.2,00,000/-
Disability at 40% at the rate of Rs.2,000/- per percentage.	Rs.80,000/-	Rs.80,000/-
Attendant charges	-	Rs.10,000/-
Total	Rs.3,00,000/-	Rs.3,40,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.3,00,000/- awarded by the Tribunal is hereby enhanced to Rs.3,40,000/-, along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The first and second respondents are liable to pay the compensation to the appellant/claimant, together with interest of 7.5%, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the bank account of the appellant/claimant through RTGS, within a period of two weeks thereafter. The appellant is directed to pay additional Court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal
(I Additional Sub Court) Erode.

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.15414

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.16242

CMA.No.1097 of 2011

KS (CO)

RRS (03/07/2019)



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