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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3559 of 2008

Bhavani (Minor)

Rep by her father and next friend Gurusamy

.... Appellant/Petitioner

Vs.

1.Rajasekaran

2.The Oriental Insurance Company,

3rd Party Claims Office,

No.8, Esplanade, Chennai-108.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.04.2008 made in MCOP No.5616 of 2003 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.N.Baskhaaran

For R-1 : Exparte

For R-2 : R.Sivakumar

J U D G M E N T

This appeal is directed against the judgment and decree made in MCOP No.5616 of 2003, dated 28.04.2008 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, by the claimant / appellant.

2. An accident took place on 14.09.2003 at about 2.30 hours, when the minor appellant was travelling in an Auto bearing Registration No.TN.01.D.5981 from Periyapalayam Temple to Chennai. The first respondent's driver, who drove the Auto in a rash and negligent manner, dashed against the Bus bearing Registration No.TN.21.N.0440 and Van bearing Registration No.TN.09.V.5099. Due to the said accident, the minor claimant / appellant sustained multiple injuries all over the body. Stating that the accident took place only on account of the rash and negligent driving on the part of the first respondent's driver, which was insured with the second respondent herein, a claim



petition in MCOP.No.5616 of 2003 was filed claiming a sum of Rs.5,00,000/- as compensation.

3. The Tribunal, based on the evidence and documents, has awarded a sum of Rs.40,000/- as compensation. Branding the same as inadequate, the minor claimant has filed this appeal.

4. Heard both sides.

5. The learned counsel for the appellant submitted that the claimant, who is a minor girl, sustained 30% disability, due to the accident and hence, the amount awarded under the head 'disability' is very low. He further submitted that the marital life of the appellant was affected due to the said accident, but the tribunal has awarded only a meager sum of Rs.10,000/- on the head of 'loss of prospectus of marriage', which is against the settled principles of law.

6. Per contra, the learned counsel appearing for the second respondent herein / Insurance Company denied the allegations made by the appellant/claimant and stated that when three vehicles are involved in the accident, the Tribunal ought not to have fastened the liability only on the second respondent herein. He further contended that the Tribunal has not appreciated the documents marked on the side of the respondents in accordance with law. He would further submitted that in any event, the compensation awarded by the Tribunal cannot be said to be low.

7. While assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered that are likely to be suffered and 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, because, the best part of his life is yet to come. While considering the claim made 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 the normal heads, there shall only be the claim for the actual expenditure for treatment, attendant charges, transportation, etc.

8. Regarding negligence, a perusal of the award passed by the Tribunal evidently discloses that PWs-1 and 2 deposed that on 14.09.2003, when they and the appellant herein were travelling in an Auto, the accident had happened. Exs.P-5, P-6 and P-7 disclose the fact that only due to the negligent driving of the driver of the Auto, the accident took place. Ex.P7-charge sheet was also filed as against the Auto driver only. As against the manner of accident, there is no rebuttal evidence adduced on the side of the second respondent herein. Hence, it cannot be permitted to contend at this point of time by the second respondent that the Auto driver was careful in driving and he was not liable for the accident.

9. The findings rendered by the Tribunal are based on documents produced before it, which in the considered view of this Court, are perfectly valid.

10. As far as the quantum of compensation awarded by the Tribunal is concerned, it has to be pointed out that the disability certificate assessing the disability at 30% was issued to the claimant, only after a period of four years from the date of accident. However, the Tribunal has taken the same at 25% and awarded a sum of Rs.25,000/-, which in the considered view of this Court, is incorrect, since even after a period of four years of accident, the disability was not reduced and hence before the four years, definitely the pain and disability would be more. As such, the Tribunal ought to have taken disability at 30%, as assessed by the Doctor and ought to have awarded a sum of Rs.30,000/- on that count. It is now ordered accordingly.

11. Further, the amount awarded under the head 'pain and suffering' was too low and hence, a sum of Rs.20,000/- is awarded under that head. Towards damage to cloths and extra nourishment, a sum of Rs.5,000/- was awarded, which is on conventional basis and hence, it is confirmed as such. Towards future medical expenses to the appellant herein, no amount was granted by the Claims Tribunal. It is borne out from the records that the appellant herein suffered head injury, fracture



on the right leg, right hand and multiple injuries throughout the body, which require medical attention time and again and hence, the Tribunal ought to have awarded some amount towards the same. Hence, a sum of Rs.10,000/- is awarded on that count.

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12. In view of the above, the award passed by the Tribunal is restructured with the following break up details:-

Damage to cloths	-	Rs. 5,000
Permanent disability	-	Rs.30,000
Future medical expenses	-	Rs.10,000
Pain and suffering	-	Rs.20,000

Total	-	Rs.65,000/-

13. In the result, the Civil Miscellaneous Appeal is partly-allowed by enhancing the quantum of compensation from Rs.40,000/- to Rs.65,000/-, which is payable by the second respondent/Insurance company with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment.

14. At this juncture, it is submitted that the minor claimant would have attained majority by now. Hence, on such application being taken out by the claimant, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / appellant herein, within one week, through RTGS, else the share of the minor claimant shall be deposited in any one of the Nationalized Banks till she attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant, once in three months, directly from the Bank, under intimation to the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

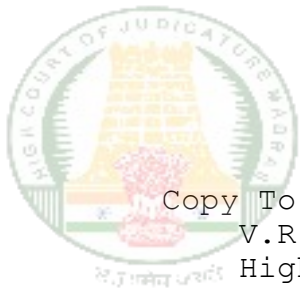
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Sub Assistant Registrar

kv / srk

To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.



Copy To : The Section Officer,
V.R. Section
High Court, Madras.

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+1cc to Mr.R.Sivakumar, Advocate SR.No.54414

C.M.A.No.3559 of 2008

NRJK (CO)
GMY (26/11/2019)