

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2389 of 2009

P.Kandhavel

(Sole appellant declared as major and mother Anjalidevi discharged from the guardianship vide Court order dated 30.09.2019 made in CMA.No.2389 of 2009 and as per memo dated 30.09.2019)

...Appellant/Claimant

vs.

1.P.Jayan

2.The New India Assurance Co. Ltd.,
No.45/146, Moore street,
Chennai - 1.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 12.11.2008 passed in MCOP.No.500 of 2004 on the file of the Motor Accident Claims Tribunal / IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : Mr.P.Kandasamy for R2

Notice dispensed with for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.500 of 2004 on the file of the Motor Accident Claims Tribunal / IV Judge, Small Causes Court, Chennai. Since the appellant / claimant was a minor on the date of the accident, he was represented by his mother Anjalidevi. Now the claimant has become a major and therefore a memorandum was filed and recorded. The claimant filed the claim petition under Section 163 A of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident on 17.12.2002.

2. The case of the claimant is that on 17.12.2002, at about 01.45 pm, when he was walking along Thiruverkadu main road, a speeding motorcycle bearing Registration No. TN 10 C 4416 belonging to the first respondent and insured with the second respondent hit him, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the motorcycle

bearing Registration No. TN 10 C 4416 was the cause of the accident and that since the said motorcycle was insured with the New India Assurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the motorcycle remained absent before the Tribunal and therefore he was set *exparte*. The second respondent / New India Assurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal / IV Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.53,800/- together with interest at the rate of 9.5% per annum to the claimant. Not 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.

4. Mr.A.Shanmugaraj, learned counsel appearing for the appellant/ claimant contended that though the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, the Tribunal failed to apply multiplier method and that the Tribunal did not also consider that the appellant / claimant was studying 3rd standard on the date of the accident. His specific contention is that there was a fracture of right femur and also cut injury on his left mouth. He therefore, prayed for enhancement of compensation.

5. Per contra, Mr.P.Kandasamy, learned counsel appearing for the second respondent / New India Assurance Company Limited contended that the Tribunal had awarded a just compensation of Rs.53,800/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. A perusal of the records shows that the appellant / claimant was aged 10 years on the date of the accident and a copy of Accident Register (Ex.P4) shows that there was a fracture of right femur and cut injury on his left mouth. Dr.Saichandran (PW2) had assessed the partial permanent disability as 35%. Since the claim petition was filed under Section 163 A of the Motor Vehicles Act, 1988, multiplier method as found in the II Schedule is adopted. The "loss of earning capacity" is calculated after fixing the notional annual income of the claimant as Rs.30,000/- and the same is extracted hereunder:

$$\begin{aligned} &= \text{Rs.}2,500/- \times 60/100 \times 228.54 \times 35/100 \\ &= \text{Rs.}1,19,983/- \end{aligned}$$

7. The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.1,19,983/-
2.	Pain and sufferings	Rs.5,000/-
Total		Rs.1,24,983/-

Thus the compensation awarded by the Tribunal is enhanced from Rs.53,800/- to Rs.1,24,983/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.53,800/- to Rs.1,24,983/-.

(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 receipt of the Court fee.

(iv) The second respondent / New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,24,983/- (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 MCOP.No.500 of 2004 on the file of the Motor Accident Claims Tribunal / IV Judge, Small Causes Court, 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 after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mbi

To

The IV Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.A.Shanmugaraj , Advocate SR.No. 83788

+lcc to Mr.P.Kandasamy , Advocate SR.No. 83525

CMA.No.2389 of 2009