

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3581 of 2010

N.Rajendran @ Raji (Minor)
Rep. by Mother & Next Friend
N.Lakshmi,

... Appellant/ Petitioner

Vs.

1. Kannan Traders,
No.84, Barakka Road 1st Street
Nammalwarpet,
Chennai - 600012.

2. The Oriental Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.8A, Esplanade Road,
Chennai - 600108.

... Respondents/ Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order and decree made in M.C.O.P.No.228 of 1999 dated 20.12.2002 on the file of the Motor Accidents Claims Tribunal, III Fast Track Court, Chennai.

For Appellant : Mr.S.Vijayakumar

For R2 : Mrs.Eleveera Ravindran

R1 - Died

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and decree dated 20.12.2002 made in M.C.O.P.No.228 of 1999 on the file of the Motor Accidents Claims Tribunal (III Fast Track Court), Chennai.

2. The case of the appellant (minor) is that on 09.06.1998 at about 11.00 a.m., while he was crossing the G.S.T.Road in front of Rasi Hospital, Chromepet, from East to West at the Pedestrian crossing, a Car bearing Reg. No.TN-07-S-3436 driven by its driver in a rash and negligent manner

dashed against him. Due to this accident, he sustained multiple injuries all over his body and immediately he was taken to Rasi Hospital at Chromepet for first aid. Thereafter, he was treated as outpatient at Government General Hospital, Chennai. In spite of the treatment, he became permanently disabled. Hence, he filed a petition before the Motor Accidents Claims Tribunal (III Fast Track Court), Chennai, claiming Rs.50,000/- as compensation from the first and second respondents as they are the owner and insurer of the vehicle involved in the accident.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that the accident had occurred only due to the negligence of the appellant who crossed the road in a hasty and negligent manner and there is no any fault on the part of the first respondent's driver. Further, it has been stated that the alleged age and nature of injuries sustained by the appellant are false and the amount of compensation claimed is also very high.

4. The Motor Accidents Claims Tribunal (III Fast Track Court), Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.9,000/- as compensation to the appellant. Aggrieved by the same, the appellant/claimant has filed this appeal before this Court seeking for enhancement of the same.

5. Heard the learned counsel for the appellant and the learned counsel for the second respondent, and perused the materials available on record.

6. On perusal of the award dated 20.12.2002 passed by the the Motor Accidents Claims Tribunal (III Fast Track Court), Chennai, in M.C.O.P.No.228 of 1999, it is observed that the appellant in order to prove that the first respondent's driver is the cause for the alleged accident marked Ex.P1 & P4 i.e. Accident Register and FIR Copy, and only based on which, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent's driver. Further, it is observed that one Dr.Thyagarajan was examined on the side of the appellant as PW2 and deposed that when he examined the appellant on 19.11.2002, he found that due to the injuries sustained in the road accident, the appellant was suffering from brain hemorrhage and he was continuously taking treatment for head ache and giddiness, and thus, he sustained 25% disability. In order to prove the same, the doctor has also marked the disability certificate of the appellant as Ex.P10, but the Tribunal on perusal of the documents found that the appellant has sustained only small injuries, and therefore, has not awarded any amount towards disability and has only awarded Rs.9,000/- towards injuries and pain and sufferings. However,

the sum of Rs.9,000/- is found to be meager and hence the same is hereby enhanced to Rs.20,000/-. It is also observed that the Tribunal has not awarded any amount towards Transport, Attender's charge and Extra Nourishment. During the period of treatment, the appellant definitely would have spent for transport, attender's charge and extra nourishment, and considering the same, a sum of Rs.1,000/- for Attender's charge and a sum of Rs.2,000/- each for Transport and Extra Nourishment are hereby awarded. Thus, the compensation awarded by the Tribunal is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs .)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Injuries, Pain & Sufferings	9,000	20,000	Enhanced
2.	Transport	-	2,000	Granted
3.	Attender's charge	-	1,000	Granted
4.	Extra Nourishment	-	2,000	Granted
	Total	9,000	25,000	Enhanced by 16,000/-

7. Accordingly, the second respondent insurance company is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After depositing the said amount, the appellant/claimant can withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

8. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The III Fast Track Court (Motor Accidents Claims Tribunal), Chennai.

2. The Manager, Oriental Insurance Co. Ltd., Motor Third Party
Claims Office,
No.8A, Esplanade Road, Chennai - 600108.

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

+1cc to Mrs.Eleveera Ravindran,Advocate SR.No. 103945

C.M.A.No.3581 of 2010

A.SK(02/09/2020)



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