

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1614 of 2015

Minor. Devika

rep. By her next friend guardian

father Anbalagan

.. Appellant/Claimant

Vs.

1.Periyasami

2.M/s.Reliance General Insurance Company Ltd.,

Sri Lakshmi Complex, 1st Floor, Bharathi Street,

Omalar Main Road, Swarnapuri,

Salem-636 004.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2015 made in M.C.O.P.No.399 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem.

For appellant : Mr.L.Chandrakumar

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 22.04.2015 made in M.C.O.P.No.399 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem.

2.The appellant/claimant filed M.C.O.P.No.399 of 2012, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.02.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Motorcycle and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,97,000/- as compensation to the appellant/claimant.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 22.04.2015 made in M.C.O.P.No.399 of 2012, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in reducing the percentage of disability from 40% to 30%. P.W.3-Doctor has certified that the appellant has lost vision and disability is permanent disability. The appellant has suffered functional disability and Tribunal without any reason reduced the percentage of disability to 30%. The head injury of the appellant was grievous in nature and appellant has undergone surgery. The Tribunal has not awarded any amounts for pain and suffering and attender charges and the amounts awarded by the Tribunal are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company has contended that the Tribunal has held that percentage of disability certified by P.W.2-Doctor is excessive and reduced the same to 30% and there is no error in reducing the percentage of disability. The Tribunal has awarded consolidated compensation for non-pecuniary damages and in view of the same, the appellant is not entitled to compensation for pain and suffering. The amounts awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that the appellant was 9 years old, 4th standard student, at the time of accident. There is no dispute that the appellant suffered loss of vision on the right eye due to the damage in the skull and Doctor assessed percentage of disability at 40%. The Tribunal reduced the same to 30% and the reason given by the Tribunal is not valid. The appellant is entitled to compensation for 40% permanent disability. The Tribunal has awarded consolidated compensation for 30% disability for non-pecuniary damages as per the judgment of the Hon'ble Apex Court reported in 2013 (2) TN MAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd.,]. As per the said judgment, for 40% disability, the appellant is entitled to get compensation of Rs.4,00,000/-. The compensation awarded by the Tribunal under non-pecuniary damages is enhanced to Rs.4,00,000/- from Rs.3,00,000/-. The Tribunal has awarded only Rs.5,000/- towards extra nourishment and considering the age of the appellant, the same is enhanced to Rs.50,000/-. The appellant was in hospital from 26.02.2012 to 02.03.2012, for a period of 6 days. The Tribunal has not awarded any amount towards attender charges.

The same is pecuniary damages and the appellant is entitled to Rs.30,000/- under the head of attender charges. As far as the compensation for pain and suffering is concerned, the same is included in non-pecuniary damages and appellant is not entitled for any amount separately for pain and suffering. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Non-pecuniary damages	3,00,000/-	4,00,000/-	enhanced
2.	Food and extra nourishment	5,000/-	50,000/-	enhanced
3.	Medical expenses	90,000/-	90,000/-	confirmed
4.	Transportation	2,000/-	2,000/-	confirmed
5.	Attender charges	-	30,000/-	granted
	Total	3,97,000/-	5,72,000/-	enhanced by Rs.1,75,000/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.3,97,000/- is enhanced to Rs.5,72,000/- along with interest and costs. The 2nd respondent is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.399 of 2012. On such deposit, the award amount is directed to be deposited in any of the Nationalized Bank, till the minor appellant/claimant attains majority. The father of the minor appellant/guardian is permitted to withdraw the interest, once in three months for the welfare of the minor appellant. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

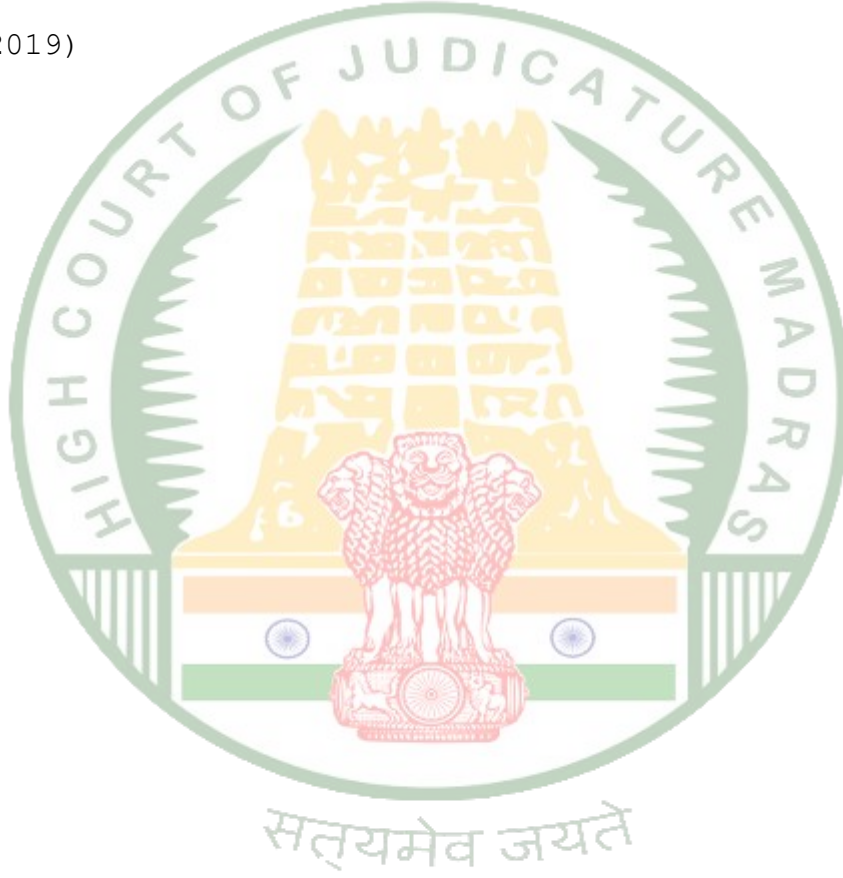
To

1.Motor Accident Claims Tribunal
The Special Subordinate Judge No.1,
Salem.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 7770
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No. 7159

C.M.A.No.1614 of 2015

VD(CO)
GN(04/04/2019)



WEB COPY