



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1699 of 2015

Ilavar Velmurugan .. Appellant/ Petitioner
(Rep. by father and natural guardian)

Vs.

1.Sri Renukambaal Matriculation School
No.21, Diversion Salai,
Polur.

2.ICICI Lombard General Insurance
Company Limited
Vellore

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 11.06.2012 in MCOP.No.316 of 2010 on the file of the Motor Accident Claims Tribunal, Vellore.

For Appellant : Mr.P.Chandrasekar

For R2 : Mr.K.K.Ramakrishnan
R1 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 11.06.2012 in MCOP.No.316 of 2010 on the file of the Motor Accident Claims Tribunal, Vellore.

2.The appellant herein is the minor claimant aggrieved against the award of the Tribunal at Rs.1,22,000/- against the claim of Rs.7,00,000/- has filed this appeal for enhancement.

3.The brief facts is as follows:
The accident occurred on 04.02.2010 when the minor petitioner was standing in the front of their house and at that time a van bearing Reg.No.TN-25-K-5078 belongs to the 1st respondent, driven by his driver in a rash and negligent manner and hit against the



minor. Due to the said accident, the minor son sustained severe grievous and multiple injuries all over his body and his left side foot was mashed. Hence the guardian of the minor injured person claimed a sum of Rs.7,00,000/- as compensation towards pain & suffering, medical expenses, disability and relating inconvenience sustained by the injured person.

4.The 2nd respondent/Insurance Company totally denied the mode of accident and also the disability sustained by the injured minor person. Apart from that the respondent/Insurance Company also contended that the 1st respondent's driver was not holding valid and effective driving license and his driving license was expired long back on the date of accident. It is further contended that it is the negligence on the part of the minor son and at that time of alleged accident, there is no rash and negligent on the part of the driver of the vehicle. The claim made by the claimant is excessive and totally denied the liability as well as the claim made by the injured person.

5.The Tribunal after analyzing the evidence and documents placed before the same has given a finding that the accident occurred only due to rash and negligent driving on the part of the driver of the said van and by taking into consideration the age of the injured minor person, nature of injuries and the disability has awarded a sum of Rs.1,22,000/- as compensation. Aggrieved against the said award the claimant has preferred this appeal.

6.In the grounds of appeal the appellant has contended that at the time of accident the injured person was a minor aged 1½ years and the medical evidence was not properly considered by the Tribunal. The total sum awarded by the Tribunal at Rs.1,22,000/- as compensation against the claim of Rs.7,00,000/- is very much on the meager side. The Tribunal has not considered the future prospects of the minor child who had sustained severe injuries in his right leg and the surgery under went by the minor child was also not considered by the Tribunal and on the whole the sum as compensation under various heads are very meagre. The compensation awarded by the Tribunal under various heads as follows:

S.No	Description	Amount awarded by this Court (Rs)
1.	Transportation	Rs. 2,000/-
2.	Extra nourishment	Rs.10,000/-
3.	Medical expenses	Rs.50,000/-
4.	Pain & suffering	Rs.20,000/-



5.	Disability	Rs.40,000/-
	Total	Rs. 1,22,000/-

Hence, the appellant prayed for setting aside the award of the Tribunal and for enhancement of compensation this appeal has been preferred.

7. Heard Mr.P.Chandrasekar, learned counsel appearing for the appellant and Mr.K.K.Ramakrishnan, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. On the side of the appellant it is vehemently contended that the Tribunal has given finding that the rash and negligent driving on the part of the driver of the 1st respondent's vehicle resulted the accident. The sum claimed by the claimant ought to have been awarded, since the injured is the minor child aged about 1½ years who sustained very grievous injuries and also undergone surgery. PW2/Doctor who issued the disability certificate was examined before the Tribunal but the Tribunal without considering those aspects and also the injuries sustained by the minor and the medical expenses incurred by the parents has awarded a meagre amount as compensation. In support of the claim, apart from that Ex.P7/discharge summary has also filed two documents before this Court in which it has been clearly mentioned the nature of injuries and treatment given for the said injury.

9. It is seen from the records that PW2 Doctor assessed the disability of the appellant at 40% but the Tribunal has taken only 20%. The reason given by the Tribunal for reducing the disability is not acceptable and the appellant is entitled to 35% of disability. Accordingly, sum of Rs.70,000/- (Rs.2,000/- x 35%) is granted towards disability by awarding Rs.2,000/- per percentage. Since, the amount awarded by the Tribunal towards transportation and pain & suffering are meagre, this Court awards a sum of Rs.5,000/- and Rs.50,000/- respectively under those heads. The amount awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

Heads	sum awarded by the tribunal	sum modified by this Court
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Transportation	Rs.2,000/-	Rs.5,000/-
Extra nourishment	Rs.10,000/-	Rs.10,000/-
Medical expenses	Rs.50,000/-	Rs.50,000/-
Pain & suffering	Rs.20,000/-	Rs.50,000/-
Disability	Rs.40,000/-	Rs.70,000/-
Total	Rs.1,22,000/-	Rs.1,85,000/-

10.In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.1,22,000/- is enhanced to Rs.1,85,000/- along with interest at the rate of 7.5% per annum.

11.The 2nd respondent/Insurance Company 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.316 of 2010. 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)

//True Copy//

Sub Assistant Registrar

mtl
To
1.The Motor Accident Claims Tribunal,
Vellore.

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.P.Chandrasekar , Advocate SR.No. 51120
+1cc to Mr.K.K.Ramakrishnan , Advocate SR.No. 51864

C.M.A.No.1699 of 2015

A.SK(05/12/2019)