

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1206 of 2016

Minor Rajenthiran

...Appellant/Petitioner

Vs

1.A.Anand Raj

2. Bharathi Axa General Insurance
Company Limited,
Metro Plaza, 2nd Floor,
No.162, Anna Salai,
Chennai 600 002.

...Respondents/Respondents

(No relief sought against the
first respondent, hence notice
may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the decree and judgment
passed in M.C.O.P.No.408 of 2014 dated 03.03.2016 on the file of
the Motor Accident Claims Tribunal, III Additional District
Court, Thiruvallur.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.S.Arun kumar for R2

R1 - No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against
the judgment and decree made in M.C.O.P.No.408 of 2014 dated
03.03.2016, on the file of the Motor Accident Claims Tribunal,
III Additional District Court, Thiruvallur. The appeal has been
preferred by the appellant/claimant, aggrieved against the award
made by the Tribunal at Rs.60,000/- against the claim of
Rs.3,00,000/-.

2. The brief facts leading to the claim petition is that on
21.02.2014, at about 09.40 p.m., when the minor claimant and his
brother were returning to their house after purchasing tea bag,
the claimant was waiting to cross the road from South to North
direction, at that time a motorcycle bearing Registration No. TN
22 CM 8079 belonging to the first respondent, came from East to
West direction in a rash and negligent manner, hit the minor
claimant. Due to which, the claimant fell down and sustained
Left Leg fracture and grievous injuries all over his body.

Hence, the appellant/claimant claimed a sum of Rs.3,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent herein.

3. The Tribunal after analysing the oral pleadings and evidence on record has concluded that the accident occurred only due to the rash and negligent riding on the part of the rider of the motorcycle bearing Registration No. TN 22 CM 8079 and since the second respondent being the insurer of the said vehicle is liable to pay the said compensation. The Tribunal has awarded a compensation of Rs.60,000/- together with interest at the rate of 7.5% to the claimant, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Permanent disability	40,000.00
2.	Pain and sufferings	10,000.00
3.	Transportation	5,000.00
4.	Extra nourishment	5,000.00
Total		60,000.00

4. Aggrieved against the said award, the appellant/claimant has preferred this appeal for enhancement of compensation awarded by the Tribunal.

5. Heard, both sides and perused all the materials available on record.

6. The learned counsel appearing for the appellant/claimant contended that the sum awarded by the Tribunal at Rs.40,000/- towards permanent disability, when the claimant suffered fracture of tibia to an extent of 20% and the Tribunal ought to have considered the disability at Rs.3,000/- per percentage. Further, the sum awarded by the Tribunal under the heads of pain and sufferings at Rs.10,000/- and transportation and nourishment at Rs.5,000/- are also very much on the meager side. The claimant is a minor and considering the age of the claimant and nature of injuries, the sum awarded under the heads are not adjusted compensation.

7. On the other hand, the learned counsel for the second respondent/ Insurance Company would submit that the award passed by the Tribunal is perfectly valid and does not require any interference of this Court, since the same is based on evidence and documents available on record.

8. It is observed that the claimant is the minor, aged about 13 years and sustained injuries due to the accident that occurred on 21.02.2014. The grievance of the appellant is that there are clear evidence and documents placed before the Tribunal that the claimant sustained injuries, which is fracture in the Tibia, for which Exs.P3 to P6 were placed before the Tribunal. He was also treated as in-patient from 21.02.2014 to 24.02.2014 and he had taken further treatment as out-patient for a very long time and PW.2/Doctor also issued the disability certificate by assessing the disability at 20% by examining the claimant as well as verifying the X-ray and other related documents.

9. The other grievance of the appellant is that when the claimant is a minor boy and fracture in his leg, the assessment made by the Tribunal by awarding a sum of Rs.2,000/- per percentage is very much on the meager side and it has to be considered by awarding a sum of Rs.3,000/- per percentage and hearing on the side of the appellant as well as the evidence placed before the Tribunal and regarding nature of injuries, the Tribunal has taken the disability at 20% of the assessment as spoken by PW.2/Doctor and the sum awarded by taking Rs.2,000/- per percentage is to be modified and it has to be awarded as Rs.60,000/- (Rs.3,000/- x 20%) towards permanent disability.

10. It is seen from the records that the Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings and this Court is modified and to enhance the same from Rs.10,000/- to Rs.15,000/-. The sum awarded by the Tribunal under the heads of transportation and extra nourishment, which are all very much reasonable. It is observed that when the claimant is a minor boy and he could not have been attended his personal work without the assistance of attender reasonable sum has to be awarded under the heads of attender charges and loss of amenities, which are not considered by the Tribunal. Hence, this Court is inclined to award a sum Rs.10,000/- towards attender charges and a sum of Rs.5,000/- towards loss of amenities. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.N o	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Permanent disability	40,000.00	60,000.00
2.	Pain and sufferings	10,000.00	15,000.00
3.	Transportation	5,000.00	5,000.00
4.	Extra nourishment	5,000.00	5,000.00

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
5.	Attender's charge		10,000.00
6.	Loss of amenities		5,000.00
Total		60,000.00	1,00,000.00

Thus, the claimant is entitled to a sum of Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

11. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.60,000/- to Rs.1,00,000/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) In view of the foregoing reasonings, the findings of the Tribunal are confirmed as such, in addition to pay and recovery issue.

(v) The second respondent/ Insurance Company, is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the van bearing Registration No. TN 22 CM 8079 on the same cause of action. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The minor claimant/ appellant herein would have attained majority by now and hence, on such application being taken out by them, the guardianship may be discharged and their share can be transferred to their Savings Bank Account.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vr
To

The Motor Accidents Claims Tribunal,
The III Additional District Court,
Thiruvallur.

+1 CC to Mr.C.Prabakaran, Advocate sr 76789
+1 CC to Mr.S.Arun Kumar, Advocate sr 76991.

C.M.A.No.1206 of 2016

MR (CO)
SP (05/06/2020)



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