



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.679 of 2015

S.Saravanan (minor)
rep. By his father and next friend
S.Subramani .. Appellant

Vs.

1.V.Munusamy
2.Oriental Insurance Co. Ltd.,
No.8, Espalanade, UIL Buildings,
Chennai 600 108. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.08.2007, made in M.C.O.P.No.1403 of 2001, on the file of the III Fast Track Court cum Additional District & Sessions Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.N.S.Sivakumar

For R1 : No appearance

For R2 : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the award dated 31.08.2007, made in M.C.O.P.No.1403 of 2001, on the file of the III Fast Track Court cum Additional District & Sessions Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.1403 of 2001, on the file of the III Fast Track Court cum Additional District & Sessions Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.06.1998. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and



negligent driving by the driver of the van belonging to the 1st respondent and directed the respondents to pay a sum of Rs.1,56,300/- as compensation to the appellant.

3. Not being satisfied with the amounts granted by the Tribunal in the award dated 31.08.2007, made in M.C.O.P.No.1403 of 2001, the appellant has come out with the present appeal.

4. The learned counsel appearing for the appellant contended that in the accident the appellant who was a minor aged 10 years suffered grievous injuries and fracture. He underwent surgery and skin grafting was also done. P.W.2-Doctor deposed that the appellant suffered 45% disability. The Tribunal erroneously reduced the percentage of disability to 40% and awarded meagre amounts as compensation. Due to the injuries, the appellant suffered loss of studies and he could not do any work as a normal student. His entire future life is affected. The amounts awarded by the Tribunal under different heads are meagre. The learned counsel appearing for the appellant in support of his contentions relied on the judgment reported in 2013 14 SCC 774 [Michael Vs. Regional Manager, Oriental Insurance Co. Ltd., and another] wherein the relevant paragraphs are extracted hereunder:

10. According to PW 1 though he took the appellant to the hospital immediately after the accident, due to non-availability of bed facility he was advised to admit him after three days during which period the appellant suffered severe pain. The appellant was in-patient for 12 days as shown by Exhibit P-5 discharge summary. The appellant had suffered fracture of both bones of right leg with displacement. Plaster of Paris applied on the right leg of the appellant could be removed only after three months. Even after the discharge and removal of plaster of Paris, as per the evidence, the appellant continued to visit the hospital for follow-up treatment. It has to be remembered that at the time the accident took place the appellant was an eight year old boy doing his third standard with all aspirations in life as spoken to by PW 1 to involve himself in sports activities which could not be fulfilled by virtue of the accident.

11. Dehors the evidence of PW 1 considering the age at which the appellant suffered a dreadful accident in which the appellant suffered a severe injury in his right leg which has virtually created a deformity in the said leg, for the rest of his life the appellant has to suffer with the



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disability. The age of the appellant was, therefore, a very relevant factor while determining the compensation payable as the sufferance of such physical disaster, that too on his right leg cannot be measured in terms of money precisely but yet having regard to the present day living conditions and the extent to which the aspirations of the appellant came to be demolished by suffering a permanent disability for no fault of his, it becomes the responsibility of the respondent to adequately compensate whatever sufferings undergone by the appellant at that time and immediately after the accident as well as the mental agony that is being suffered by the appellant lifelong.

14. Having bestowed our serious consideration and having noted the various disadvantages suffered by the appellant by virtue of the accident, we are convinced that the appellant is entitled for still higher amount than what has been granted by the Tribunal as well as the High Court on account of pain and sufferings as well as loss of amenities. As held by us earlier, though it will be impossible to make a precise assessment of the pain and suffering of the appellant considering the age at which the appellant met with the accident and the consequent disability and also taking note of the deprivation of better prospects in the life of the appellant due to the physical disability suffered, we determine the compensation in a sum of Rs 4 lakhs as claimed by the appellant under the following heads:

Towards pain and sufferings and permanent disability	Rs 2,80,000
Towards medical expenses, conveyance, nourishing food and attendant charges	Rs 20,000
Towards loss of amenities	Rs 1,00,000
Total	Rs 4,00,000

5. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant is a student and is a non-earning member and the Tribunal without properly appreciating the pleadings, oral and documentary evidence has granted excessive amounts towards disability and other heads. The appellant has not made out any case for



enhancement of the compensation. In view of the nature of injuries and disability, the appellant is not entitled to any enhancement as the amounts awarded by the Tribunal itself is excessive. The judgment relied on by the learned counsel appearing for the appellant is not applicable to the facts of the present case, since for the minor injured in that case 16% disability was assessed to the whole body. In the present case, the disability assessed is only for the fracture in the limb.

6. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

7. From the award of the Tribunal, it is seen that the minor appellant met with an accident while he was aged 10 years. From the award of the Tribunal, it is seen that for the injuries sustained by the minor appellant, skin grafting was done apart from the treatment for other injuries. He took treatment as in-patient in Tamilnadu Hospital, Chennai and C.M.O Government General Hospital, Chennai. The issue of payment of compensation for the injuries sustained by the injured up to age 15 was considered by the Hon'ble Apex Court. In the judgment reported in 2013 (2) TN MAC 338 (SC) [Master Mallikarjun Vs. Divisional manager, National Insurance Co. Ltd., & another], the Hon'ble Apex Court considering the disability and how it affected the future of minor, has held that the minor must be paid compensation based on the percentage of disability suffered by him due to the injuries in the accident. The ratio in the said judgment was followed in the subsequent judgment of the Hon'ble Apex Court reported in 2014 (2) TNMAC 553 (SC) (Kumari Kiran v. Sajjan singh). As per the ratio in the judgment of the Hon'ble Apex Court in Master Mallikarjun Vs. Divisional manager, National Insurance Co. Ltd., & another, for the disability between 30% to 60%, a sum of Rs.4,00,000/- is payable as compensation. In the present case, P.W.2-Doctor has certified that minor appellant suffered 45% disability. The Tribunal reduced the percentage of disability to 40%. Whether the appellant suffered 45% or 40% disability, the appellant is entitled to a sum of Rs.4,00,000/- as compensation as per the judgment of the Hon'ble Apex Court referred to above. The appellant is also entitled for compensation for the medical expenses, pain and suffering, transportation charges, extra nourishment, etc., as awarded by the Tribunal. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.10,000/- is granted towards attendant charges. The compensation granted by the Tribunal under other heads are just and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of comfort in future and for mental agony	10,000/-	10,000/-	confirmed
2.	Transportation	3,000/-	3,000/-	confirmed
3.	Permanent Disability	75,000/-	4,00,000/-	enhanced
4.	Extra nourishment	3,000/-	3,000/-	confirmed
5.	Pain and sufferings	30,000/-	30,000/-	confirmed
6.	Loss of future marital status	10,000/-	10,000/-	confirmed
7.	Loss of amenities	15,000/-	15,000/-	confirmed
8.	Medical bills	10,311/-	10,311/-	confirmed
9.	Attender charges	-	10,000/-	granted
	Total	1,56,311/- rounded off to Rs.1,56,300/-	4,91,311/- rounded off to Rs.4,91,300/-	Enhanced by Rs.3,35,000/-

8. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.1,56,300/- is enhanced to Rs.4,91,300/- along with interest and costs. The respondents are directed to deposit the enhanced award amount along with interest and costs, 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.1403 of 2001. On such deposit, the award amount is directed to be deposited in any of the Nationalized Banks, 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.

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-s/d-
Assistant Registrar (CSV)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Judge,

III Fast Track Court cum

Additional District & Sessions Court,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,

V.R. Section,
High Court, Madras.

+1 cc to Mr.N.S.Sivakumar Advocate sr38290

+1 cc to Mr.S.Manohar Advocate sr38294

C.M.A.No.679 of 2015

vba (co)

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