THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.571 of 2013

Minor Rizwan
(rep. By N.F.G. Sarthar) .. Appellant/Petitioner

Vs

1. T.S.Rajkumar
(R-1 Already set exparte in Lower Court)

2. The Branch Manager,
United India Insurance Company Limited,
Branch Office,
No.95, Periya Street,
Thiruvannamalai District. ... Respondents/Respondents

PRAYER :

The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 08.08.2006 made in M.C.O.P.No.1908 of 2003, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate - I, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For Respondent-1 : Set exparte before the Tribunal

For Respondent-2 : Mr.T.Ravichandran

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate - I), Krishnagiri, dated 08.08.2006 in M.C.O.P.No. 1908 of 2003, the claimant has come forward with the present Appeal seeking enhancement of the compensation.

2. On 01.02.2002 at about 11 :10 hours, when the claimant was playing on the left side of the road, near Billa Kottai Basuveswara Rice Mill, Krishnagiri, a Bus, viz., V.D.S.R., bearing Registration No.TN 25-B-4536, belonging to the first

respondent, insured with the second respondent being driven by its driver, came in a rash and negligent manner at an high speed, without giving horn and without minding the traffic rules and dashed against the minor claimant, who was playing on the left side of the road at Krishnagiri. In the said accident, the minor claimant sustained head injury. Hence, the claimant, represented by his father and natural guardian filed a claim petition against both the owner of the offending vehicle/first respondent and insurer/second respondent to pay a compensation of Rs.5,00,000/- jointly or severally.

3. The first respondent, owner of the offending vehicle remained absent before the Tribunal and hence, he was set set exparte.

4. The second respondent/Insurance Company resisted the Claim Petition by filing a counter statement, inter alia disputing their liability by contending that, it was due to the negligence on the part of the parents, the accident has occurred, as they led the minor claimant to play on the road, abutting the National Highway and was not due to the negligent act of the driver of the bus, and infact, when he happened to see the boy crossing the tar road, he rightly applied the horn and deviated the vehicle towards rights side and saved the life of the minor claimant, however, with some injury. Therefore, the second respondent contended that they are not liable to pay compensation. That apart, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the father of the minor claimant examined himself as P.W.1, besides examining one other witness, Dr.Sankar as P.W.2 and marked 11 documents as Exs.P.1 to P.11. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Tribunal, on appreciation of both oral and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent act of the driver of the Bus belonging to the first respondent and held that both the respondents 1 and 2 are jointly and severally liable to pay a sum of Rs.39,758/- with interest at 7.5% p.a., as compensation to the appellant. The compensation awarded by the Tribunal under various heads are as follows:-

i)	Disability	:	Rs.29,250/-
ii)	Pain and suffering	:	Rs.2,600/-
iii)	Medical bills	:	Rs.3,808/-
iv)	Transport	:	Rs.800/-
v)	Extra nourishment	:	Rs.2,600/-
vii)	Damage to clothes	:	Rs.200/-

viii) Attenders charge : Rs.500/-

Rs.39,758/-

7. The learned counsel appearing for the appellant/claimant submitted that due to the accident, the minor claimant sustained head injury apart from other injuries all over the body, and even after discharge from the Hospital, where, the claimant was admitted initially and given treatment at the time of the accident, due to the severe head injury, the claimant is still undergoing treatment as outpatient. Dr.Sankar, P.W.2 had assessed the disability suffered by the claimant as 15%, however, the Tribunal has fixed the functional disability only at 13% and determined the compensation of Rs.29,250/- towards disability, which is meager. The injured is 2 years old at the time of accident, and due to the accident, there was a crack on the head. P.W.2 also deposed evidence in this regard. The learned counsel further contended that the injured is now 18 years old and due to the head injury sustained by him, he is still suffering from head ache and is not able to sleep due to pain and this will be life long issue, and in these circumstances, the percentage of disability fixed by the Tribunal at 13% is very meager, and he has to be paid higher amount of compensation towards disability. In support of such contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Kumari Kiran Vs. Sajjan Singh, reported in 2014(2) TNMAC 553, wherein, it is held that, in the case, where, minor claimant is involved in a motor accident, they should be paid a sum of Rs.1,00,000/- for 10% of disability, in case, if the disability is 20%, a sum of Rs.2,00,000/- shall be awarded, instead of the applying the multiplier method. The learned counsel submitted that the ratio laid down by the Hon'ble Supreme Court in the aforesaid case, shall be applied in the present case, since the claimant in this case is a minor at the time of the accident.

8. The learned counsel appearing for the second respondent/Insurance Company also fairly admitted that the judgment relied upon by the learned counsel for the appellant/claimant is applicable to the case on hand, so far as fixation of compensation towards disability aspect is concerned. Insofar as the compensation awarded by the Tribunal under other heads are concerned, he submitted that the same need not be disturbed at this juncture.

9. Heard the learned counsel appearing for the appellant/claimant and the learned counsel for the second respondent/Insurance Company and perused the materials on record.

10. In view of the submission by the learned counsels on either side, this Court is inclined to follow the principle laid down by the Hon'ble Apex Court in the case of Kumari Kiran (supra), while determining the notional income of the minor without applying the multiplier method. Thus, by applying the said principles, this Court is of the view that the functional disability taken by the Tribunal at 13% which is regardless of the functional disability assessed by P.W.2 is incorrect, and the claimant is entitled to a compensation of Rs.1,30,000/-.

11. Insofar as, the compensation awarded by the Tribunal under the heads are concerned, viz., i) Pain and Suffering at Rs.2,600/-, ii) Damage to cloths at Rs.200/-, iii) Extra nourishment at Rs.2,600/-, iv) Transportation at Rs.800/-, v) Attender's charges at Rs.500/-, vi) Medical expenses at Rs.3,808, are concerned, this Court of the view the same are just and fair and stand confirmed.

12. Thus, the total compensation payable to the claimant is modified and the break up details of which is mentioned below:-

S.No	Head	Amount granted p
1	Loss of income due to functional permanent disability at 13%	Rs.1,30,000/-
2	Pain and Sufferings	Rs.2,600/-
4	Extra nourishment	Rs.2,600/-
5	Damage to clothes	Rs.200/-
6	Transportation	Rs.800/-
7	Medical expenses	Rs.3,808/-
8	Attendant charges	Rs.500/-
Total		Rs.1,40,508/-

13. The 2nd respondent/United India Insurance Co.Ltd., is directed to deposit the entire amount awarded by this Court with interest and costs from the date of Petition till the date of deposit before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Since it is represented that the minor claimant has attained majority now, on the deposit being made by the Insurance Company, the

Tribunal shall transfer the amount to the claimant bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.39,758/- is enhanced to Rs.1,40,508/-. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate - I, Krishnagiri.

2. The Record Keeper,
   V.R. Section, High Court, Madras.

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No. 30659

VG II(CO)
GN(19/11/2019)