

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.606 of 2013

Minor Anju

D/o. Nandha Gopal @ Dhandapani

rep. by her mother as guardian

Jeyanthi @ Chandrika

.... Appellant / Petitioner

Vs

1. Murugan

2. Divisional Manager,

Reliance General Insurance Co.Ltd.,

II Floor, Bamer Lawne House,

No.628, Annasalai, Chennai.

.... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No.72 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge Thiruvannamalai dated 31.05.2011.

For Appellant : Mr. R.Terry Chellaraja

For Respondents : Mr. S.Arun Kumar for R2
No appearance for R1

J U D G M E N T

The instant appeal has been filed by the claimant challenging the Award dated 31.05.2011 passed by the learned Motor Accident Claims Tribunal, Additional Sub Judge, Thiruvannamalai in MCOP.No.72 of 2009 seeking enhancement of compensation.

Brief facts of this case:

2. The Appellant sustained injuries as a result of an accident that took place on 29.09.2008 caused by a two wheeler namely Bajaj Discover bearing Registration No.TN-25-Y-9699 owned by the first respondent and insured with the second respondent. The Appellant preferred a compensation claim for a sum of

Rs.5,00,000/- before the Motor Accident Claims Tribunal, Additional Sub Judge, Thiruvannamalai in MCOP. No. 72 of 2009 for the injuries sustained by her. The Tribunal by its award dated 31.05.2011 passed in MCOP No.72 of 2009 directed the second respondent to pay the Appellant a sum of Rs.55,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and recover the same from the first respondent.

3. Aggrieved by the Award dated 31.05.2011 passed by the Motor Accident Claims Tribunal, Additional Sub Judge, Thiruvannamalai, in MCOP.No.72 of 2009, the instant appeal has been filed by the Appellant seeking enhancement of compensation.

4. Heard learned counsel for the appellant and learned counsel for the second respondent. Despite service of notice on the first respondent, none appears on behalf of the first respondent.

5. The liability fixed by the Tribunal on the owner of the vehicle/first respondent is not disturbed by this Court, since the appeal has been filed by the claimant challenging the quantum alone.

6. Before the Tribunal, the injured claimant was examined as P.W.1. One Doctor Raveendran, who assessed the partial disability of the injured at 25%, was examined as P.W.2. In support of the claim petition Exs.P1 to P6 were marked. Ex.P1 - FIR, Ex.P2- Motor Vehicle Inspection Report, Ex.P3 - Accident Register, Ex.P4 - Copy of the Policy, Ex.P5 - Partial disability certificate, Ex.P6-X-ray.

7. On a perusal of the judgment of the Tribunal, it is seen that the claimant was assessed 25% disability by the Doctor, the Tribunal had reduced the partial disability as 20% based on the evidence of cross examination of PW2 and awarded a sum of Rs.20,000/- as compensation with interest at the rate of 7.5% per annum, taking into account the monthly income of the claimant as Rs.1000/-.

8. The learned counsel for the claimant submitted that as per Kumari Kiran Vs Sanjan Singh case reported in 2014 (2) TNMAC 553 (SC) 30% partial disability may be fixed for the injured. The learned counsel for the second respondent contended that this case would be referred only to whole body disability whereas this is not applicable in this case. He further submitted that taking into consideration of the injured who is a minor child 25% may be considered.

9. However, considering the facts and circumstances of the case, monthly income is enhanced to Rs.3,000/- and partial disability at 25%. Therefore by enhancing the partial disability at 25% and monthly income as Rs.3,000/- the partial disability would be Rs.75,000/- (Rs.3,000/-x 25% = 75,000/-).

10. The Tribunal has awarded a sum of Rs.25,000/- under the heads Medical expenses, transport, future transport expenses, extra nourishment, expenses for Doctor who assessed the disability.

11. Medical expenses, Transportation and Extra Nourishment:-

Since the Tribunal awarded very low amounts to the above mentioned heads, this court is inclined to enhance the award amounts to Rs.10,000/- towards "Medical expenses", Rs.20,000/- towards "Transportation", Rs.10,000/- towards "Extra Nourishment" respectively.

12. Pain and Suffering :-

The Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering. Since, this court is of the view that the said sum is very low for Pain and suffering, the same is enhanced to Rs.30,000/-

13. Attender Charges :-

As no amount awarded towards "Attender Charges" by the Tribunal, a sum of Rs.10,000/- is fixed under that caption.

The details of the compensation are as under:-

Heads	Amount awarded by the Tribunal	Amount by this Court
Permanent Disability	Rs.20,000/-	Rs.75,000/-
Pain and Suffering	Rs.10,000/-	Rs.30,000/-
Medical Expenses	Rs.25,000/-	Rs.10,000/-
Transportation		Rs.20,000/-
Extra Nourishment		Rs.10,000/-
Attender Charges		Rs.10,000/-
Total	Rs.55,000/-	Rs.1,55,000/-

14. In the light of the above observations, the amount awarded by the Tribunal is increased from Rs.55,000/- to Rs.1,55,000/- and the second respondent is directed to deposit the modified award amount, after deducting the amount already deposited, if any, together with interest at the rate of 7.5%

per annum from the date of claim till the date of deposit and costs to the credit of MCOP. No.72 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Thiruvannamalai within a period of four weeks from the date of receipt of a copy of this Order and recover the same from the first respondent who is the owner of the vehicle. On such deposit being made, the Award amount shall be deposited in any one of the nationalised banks, till the claimant attains majority and the guardian/mother of the Appellant is permitted to withdraw the interest accrued once in six months. 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. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

dpq

To

The Additional Sub Judge,
Thiruvannamalai

+1 cc to Mr.F.Terry Chellaraja, Advocate, S.R.No.10511

+1 cc to Mr.S.Arun Kumar, Advocate, S.R.No.10991

C.M.A.No.606 of 2013

GJ(CO)
SSM(30/05/2019).

सत्यमेव जयते

WEB COPY