



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.1309 of 2016

and

C.M.P. (MD) .Nos.11361 of 2017

Minor.Rakesh

rep. by his mother and next friend

guardian Radha

... Appellant/
Claimant

Vs.

1.Seethai

2.United India Insurance Company Ltd.,
through its Branch Manager,
Xavier Building,
II Floor, P.W.D. Road,
P.B. No.50, Nagercoil.

3.Vasantha

4.Iffco-Tokio General Insurance Co. Ltd.,
through its Branch Manager,
Tulsi Chambers, III Floor, No.195,
T.V.Swami Road (West),
R.S.Puram,
Coimbatore.

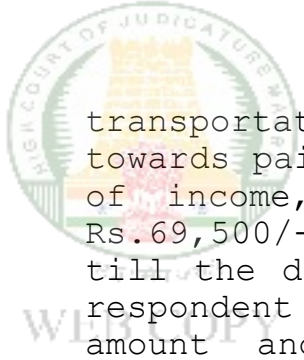
... Respondents/
Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 09.01.2012, passed in M.C.O.P.No.802 of 2011 by the Motor Accident Claims Tribunal / Fast Track Court No.II, Tirunelveli.

For appellant	:	Mr.T.Selvakumaran
For respondents 1 & 3	:	No appearance
For 2 nd respondent	:	Mr.Ilango
For 4 th respondent	:	Mr.B.Prasanna Vinoth

JUDGMENT

It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.1,000/- towards



transportation; Rs.1,000/- towards extra nourishment, Rs.7500/- towards pain and sufferings; Rs.25,000/- towards disability and loss of income, and Rs.35,000/- towards medical expenses, totalling Rs.69,500/- with 8% interest per annum from the date of petition till the date of realization. The Tribunal has directed the second respondent / Insurance Company to deposit the entire compensation amount and dismissed the claim petition in respect of the respondents 3 and 4. The appellant / claimant has filed this appeal seeking to enhance the compensation.

2. The learned counsel appearing for the appellant / claimant would submit that due to accident, the claimant has sustained fracture on right femur junction and injuries on the left leg ankle, and the doctor assessed the disability of the claimant as 20% partial permanent disability. While so, the Tribunal has awarded only Rs.25,000/- towards disability, which is very meagre. By relying upon the decision of the Hon'ble Supreme Court in Mallikarjun Vs. Divisional Manager, National Insurance Company Ltd. and another, reported in 2013 ACJ 2445, he submitted that in the case of children suffering disability above 10% and upto 30%, the Hon'ble Supreme Court has awarded Rs.3 lakhs towards disability and the same may be awarded in this case also. He would further submit that the award passed on the other heads also are very meagre and therefore, the same may be enhanced. Thus, he prayed to enhance the award amount.

3. He would further submit that the Tribunal has not awarded any sum towards future medical expenses and that after the award, the claimant has spent nearly about Rs.13,860/- towards medical expenses and in order to prove the same, the claimant has filed C.M.P.(MD).No.11361 of 2017 seeking to receive the medical bills as additional documents. Thus, he prayed to enhance the award amount.

4. The learned counsel appearing for the contesting second respondent / Insurance Company would submit that the Tribunal has already excessively awarded the compensation and therefore, the award passed by the Tribunal need not be interfered with. The medical bills produced by the claimant cannot be accepted at this stage and it is not known whether the name mentioned in the bills is the name of the claimant or some other boy. Thus, he prayed to dismiss the appeal.

5. Heard the learned counsel appearing for the parties and perused the records carefully.

6. A perusal of the record shows that due to accident, the claimant has sustained multiple injuries and fracture on right femur junction, and undergone a surgery, in which a plate and rod was fixed. At the time of the accident, the claimant was aged about 4 years. The doctor has assessed the disability as 20% partial permanent disability. The Tribunal has awarded Rs.25,000/- towards disability and loss of income for engaging an assistant.



7. In similar circumstances, in the case of Mallikarjun, cited supra, after relying on various decisions, the Hon'ble Supreme Court has held in paragraph No.12 as follows:

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure towards treatment, attendant, etc., should be, if the disability is above 10 per cent and upto 30 per cent to the whole body, Rs.3,00,000; up to 60 per cent Rs.4,00,000; up to 90 per cent, Rs.5,00,000/- and above 90 per cent, it should be Rs.6,00,000/-. For permanent disability up to 10 per cent, it should be Rs.1,00,000/-, unless there are exceptional circumstances to take a different yardstick."

In that case, the Hon'ble Supreme Court has awarded Rs.3 lakhs under the heads of pain and sufferings already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, etc., and loss of amenities in life on account of permanent disability.

8. In this case, as stated earlier, the claimant is a minor and he sustained 20% partial permanent disability. Therefore, following the above decision, this Court is inclined to award Rs.3 lakhs under the heads of pain and sufferings already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, etc., and loss of amenities in life on account of permanent disability and accordingly it is awarded. Hence, the award passed by the Tribunal under the heads of disability and loss of income, and pain and sufferings are set aside.

9. It is seen that the claimant has produced the medical bills to the value of Rs.13,860/-. The medical bills are related to the treatment given to the claimant for removal of plate and rod inserted in the surgery. The second respondent disputed the medical bills. Instead of referring the matter back to the Tribunal for marking of those documents through oral evidence, this Court is of the view that it would be appropriate to award Rs.15,000/- towards future medical expenses, which was omitted to be awarded by the Tribunal. Accordingly, Rs.15,000/- is awarded towards future medical expenses. Consequently, C.M.P.(MD).No.11361 of 2017 is closed.

<https://hcservices.ecourts.gov.in/hcservices/>

10. So far as the award passed by the Tribunal under the other

heads ie., transportation and nutrition are concerned, this Court is of the view that they are very meagre. Considering the year of the accident and nature of the injuries sustained by the claimant, they are enhanced to Rs.4,500/- and Rs.15,000/- respectively. Thus, the total award passed by this Court are as follows:

Heads	MCOP	CMA
Transportation	Rs.1,000/-	Rs. 4,500/-
Nutrition	Rs.1,000/-	Rs. 15,000/-
Pain and Sufferings	Rs.7,500/-	-
Disability and loss of income	Rs.25,000/-	-
Pain and sufferings already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, etc., and loss of amenities in life on account of permanent disability	-	Rs.3,00,000/-
Medical Bills	Rs.35,000/-	Rs.35,000/-
Future medical expenses	-	Rs.15,000/-
Total	Rs.69,500/-	Rs.3,69,500/-

11. In view of the above, the award is enhanced from Rs.69,500/- to Rs.3,69,500/-. The second respondent / Insurance company is directed to deposit the amount now awarded with 8% p.a. from the date of petition till the date of deposit, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the same shall be deposited in a nationalised bank till the claimant attains majority and the mother and natural guardian of the minor claimant is permitted to withdraw the interest accrued in the deposit once in three months. The claimant is directed to pay the Court fee, if any, to be payable, within a period of four weeks from the date of receipt of a copy of this judgment.

12. This Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To
The Additional District Judge cum FTC No.II,
Motor Accident Claims Tribunal,
Tirunelveli.

Copy to:

The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-72477[F] dated 01/07/2019)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-72638[F] dt.02/07/2019)

+1 CC to M/s.A.ILANGO, Advocate (SR-72785[F] dated 02/07/2019)

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