



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3248 of 2007

S.Anirudh Shrinivas

.. Appellant

(appellant declared as major and his father and next friend, S.Subramani was discharged from the guardianship as per the order of this Court dated 04.01.2011 made in M.P.No.1 of 2010 in C.M.A.No.3248 of 2007)

Vs.

1.S.Alauddin

(R1 remained exparte before Tribunal)

2.United India Insurance Company Limited,

No.C-1, 1st Main Road, 1st Floor,

Anna Nagar, Chennai - 600 102

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.08.2007 made in M.C.O.P.No.1236 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Ms.P.T.Saleem Fathima
for Mr.M.Swamikannu

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 14.08.2007 made in M.C.O.P.No.1236 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1236 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.41,00,000/- as compensation for the injuries sustained by him in the accident that took place on



14.11.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the respondents, being the owner and insurer of the motorcycle jointly and severally to pay a sum of Rs.2,48,168/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that due to the injuries sustained by the appellant in the accident, he lost his right ear's hearing capacity and he is not able to close his mouth, drink fluids and chew food. The Tribunal has not awarded any amount towards loss of earning power, attendant charges, loss of marital prospects and loss of income. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, transportation, loss of amenities, disability and mental agony are meagre. The interest granted by the Tribunal at 7.5% per annum is meagre and prayed for enhancement of compensation.

6.Per contra, Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved that he lost his earning power by producing medical records. In the absence of any medical records, he is not entitled to any amount towards loss of earning power. The Tribunal has granted excess amounts towards loss of amenities, pain and sufferings and mental agony. Therefore, the appellant is not entitled to any amount towards attendant charges and loss of marital prospects. The appellant was a school student at the time of accident and hence, he is not entitled to any amount towards loss of income. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.From the award passed by the Tribunal it is seen that due to the injuries sustained by the appellant in the accident, he lost his right ear's hearing capacity and he is not able to close his mouth, drink fluids and chew food. To prove the injuries sustained by him, he examined P.W.4/Doctor. P.W.4/Doctor has



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examined the appellant and certified that appellant suffered 65% disability and issued Ex.P13/disability certificate to that effect. The Tribunal considering Ex.P13/disability certificate, awarded a sum of Rs.65,000/- towards disability by fixing a sum of Rs.1,000/- per percentage of disability. The accident occurred in the year 2005 and the appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,30,000/- [Rs.2,000/- X 65% of disability]. The appellant has taken treatment in the hospital as in-patient from 14.11.2005 to 23.11.2005 and a surgery was conducted on 16.11.2005 and the Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.25,000/- is awarded towards attendant charges. Considering the age of the appellant, nature of injuries and period of treatment taken by the appellant, the appellant would have suffered more pain and the compensation awarded by the Tribunal towards pain and sufferings, loss of amenities and extra nourishment are enhanced to Rs.50,000/-, Rs.1,00,000/- and Rs.25,000/- respectively. The appellant has not proved that he lost his earning capacity. Therefore, he is not entitled to any amount towards loss of earning capacity. The amounts awarded by the Tribunal towards medical expenses, mental agony, deprivation of activities, oil massage and transportation are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	65,000/-	1,30,000/-	Enhanced
2.	Pain and sufferings	25,000/-	50,000/-	Enhanced
3.	Deprivation of activities	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	10,000/-	25,000/-	Enhanced
5.	Attendant charges	-	25,000/-	Granted
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Medical expenses	33,168/-	33,168/-	Confirmed
8.	Loss of amenities	50,000/-	1,00,000/-	Enhanced
9.	Oil massage	20,000/-	20,000/-	Confirmed
10.	Mental agony	25,000/-	25,000/-	Confirmed



Total	Rs.2,48,168/-	Rs.4,28,168/-	enhanced by Rs.1,80,000/-
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,48,168/- is hereby enhanced to Rs.4,28,168/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, 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.1236 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(I)

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Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No.19355
+lcc to M/s.P.T.Saleem Fathima, Advocate, S.R.No.18600

C.M.A.No.3248 of 2007

RGN(CO)
CB(24/09/2021)