



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2190 of 2010

Minor Singaravelu
S/o. Santhi
(Rep. By his mother
and guardian)

...Appellant / Petitioner

Vs.

1.A.Packiri Sate

2.The Branch Manager,
The Bajaj Alliance General
Insurance Co., Ltd.,
Raman nagar, K.M.A. Complex
First Floor, By pass Road,
Madurai District.

...Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.03.2010 made in MCOP. No.42 of 2009 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Nagapattinam.

For Appellant : Mr.M.Thamizhavel

For Respondent : Mr.M.B.Gopalan for R2

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 18.03.2010 passed in MCOP.No.42 of 2009 by the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Nagapattinam.

2. The case in brief are as follows:

On 08.04.2008 at about 9.30 a.m., the petitioner was proceeded towards his school through bicycle from east to west direction, at that time, TATA load Van bearing Reg.No.TN-51-D-6822 was driven by its driver in a rash and negligent manner and dashed against the minor petitioner, as a result of which, he



sustained grievous injuries in all over the body. The first respondent was the owner and the second respondent was the insurer of the van, both are jointly liable to pay compensation to the petitioner.

WEB COPY

3. The learned counsel for the Appellant submitted that the Tribunal has failed to appreciate the fact of partial permanent disability wherein, the Doctor, who examined the injured minor, had given an opinion that he had suffered 54% partial permanent disability. The Tribunal has not applied multiplier system and had granted a meagre amount of Rs.65,000/-. Therefore, he had come in appeal for enhancement of compensation.

4. The Tribunal had granted damages under various heads totalling Rs.65,100/- only, which the learned Counsel for the Appellant feels it is very very meagre compared to the agony suffered by the minor, who was 14 years at the time of accident and who suffered multiple injuries.

5. The learned counsel for the Respondent/Insurance Company submits that the multiplier system was not adopted. At the same time, the learned counsel for the Insurance Company submits that in all cases mechanically multiplier system need not be adopted. The Tribunal or this Appellate Court can consider the reason regarding 54% partial disability and any amount may be considered by this Court.

6. On perusal of the award of the learned Tribunal it is found that P.W.1 was the mother of the minor. As per the Code of Civil Procedure, a minor or an indigent person cannot institute a suit. Instead the guardian of the minor/indigent person has to institute the suit. Therefore, the claim petition was filed by the mother of the minor/injured victim as Petitioner and her evidence was recorded in the place of the evidence of the minor.

7. As per the Evidence Act, when evidence is collected by the Court/Tribunal, the best available evidence shall be presented to the Court or Tribunal. At the time of recording evidence, the injured minor he might have attained majority and he could have been examined as a competent witness. He could have deposed more effectively than his mother. Therefore, best evidence was not available before the Tribunal. To this query of this Appellate Court, the learned Counsel for the Appellant submits that the Tribunal had not directed the learned Counsel for the Petitioner to produce the injured minor as a competent witness. It all depends on the attitude of the trial Judge, every individual approaches the issues differently. The Judge



might have thought it that the petitioner is the right person to produce the witness, the best evidence before the Tribunal. Therefore, he/she might have left it to the discretion of the learned Counsel representing the Petitioner. Any how while passing orders the Judge was handicapped in the absence of the best available evidence of the injured victim. Therefore, in the opinion of the Judge Rs.65,000/- award is sufficient to meet the ends of justice. Now on re-appreciation of the same and on the basis of the submissions of both side counsel, this Court considers that the minor victim was aged 14. There are several rulings of the Hon'ble High Court and Hon'ble Supreme Court that the injured victim of accidents who are of tender age can regain normal health and shape of limbs due to the advancement of medical science. Best medical treatment is available in almost all the towns in India. Therefore, this Court feels that the learned counsel for the victim/Petitioner and the victim's mother P.W.1 had not produced the victim, who was aged 14 years at the time of accident. If he was produced, the Tribunal had the discretion to appreciate the physical appearance of the injured, in which case the award will not be inconsonance to the claim. The claimant sought compensation under various heads amounting to Rs.3,00,000/-. Therefore, apprehending such exigency the claimants had avoided to present the injured victim as competent witness before the Tribunal. That had caused the Tribunal to award Rs.65,000/- which the claimants as Appellants feel meagre amount not in consonance with the pain and agony suffered by the injured minor victim.

8. Considering the submissions of the learned counsel for the Appellant and the submissions of the learned counsel for the Insurance Company, this Court feels that the amount of Rs.65,100/- is very meagre, considering the pain, agony and trauma suffered by the minor. Therefore, for 54% partial permanent disability Rs.2,000/- is fixed for 1% (i.e., $54 \times 2000 = 1,08,000$) and Ex.P7, Rs.1,800/- spent towards transportation is rounded as Rs.2,000/-. The appellant has taken treatment as in-patient in Tanjavur Medical College Hospital from 18.04.2008 to 17.05.2008. Considering the period of treatment and nature of injuries sustained by the appellant, this Court awards a sum of Rs.10,000/- towards extra nourishment and Rs.10,000/- towards pain and sufferings. For the attendant charges no amount was granted. The minor had undertaken treatment for a period of 1 ½ month. Therefore, this Court awards a sum of Rs.10,000/- towards attendant charges.

9. Since the amount awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:



Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Permanent disability	54,000/-	1,08,000
2	For Medical Expenses	2,319.50	2,319.50
3	For Extra Nourishment	3,000	10,000
4	For Pain and Sufferings	3,000	10,000
5	For Transportation	1,800	2,000
6	Damages to Clothes	1,000	1,000
7	Attendant Charges	-	10,000
	Total Rounded off	65.119 65,100	1,43,319

Accordingly, this Civil Miscellaneous Appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.65,100/- to Rs.1,43,319/-. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent is directed to deposit the modified award amount after deducting the amount already deposited if any together with interest from the date on which Civil Miscellaneous Appeal was numbered by the Registry of the High Court (The appellants/claimants cannot claim interest for the period of condonation of delay in representation) till the date of deposit and costs to the credit of MCOP.No.42 of 2009 within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.42 of 2009 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. The Appellant is directed to pay requisite court fee if any for the enhanced award amount before obtaining a copy of this Judgment. No costs.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

dh

To

1.The Cheif Judicial Magistrate,
(Motor Accident Claims Tribunal),
Nagapattinam.



2.The Section Officer,
V.R Section,
High Court, Madras.

WEB COPY

+1cc to M/s.Thamizhavel, Advocate SR.No.41581

C.M.A.No. 2190 of 2010

RSI(CO)
RVM(03/09/2021)