

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.15.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2570 of 2009

Minor Surendar @ Sundarapandian

S/o. Pandian

Rep. by Next friend Father Pandian

... Appellant/Petitioner

vs.

1.Ravi

2.The Proprietor,

Indira Stores,

40, P.Shanmugam Street,

Kumbakonam.

3.The National Insurance company Limited,

Rep. by its Manager,

Having office at

Thanjavur.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order of Motor Accident Claims Tribunal (Additional District Court), Puducherry at Karaikal dated 11.02.2009 made in MACTOP.No.230 of 2007.

For Appellant : Mr.S.Sounthar

For Respondents : Not ready in notice for R1 & R2

Mrs.N.B.Surekha for R3

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 11.02.2009 passed by the Motor Accident Claims Tribunal (Additional District Judge, Karaikal) in MCOP.No.230 of 2007.

2. The Appellant/claimant sustained injuries on 30.05.2005 as a result of an accident caused by a vehicle owned by the second respondent and insured with the third respondent. The Appellant/claimant was a minor, aged 5 years at the time of the accident. Hence, he preferred a claim through his father and natural guardian before the Motor Accident Claims Tribunal in MCOP.No.230 of 2007 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal under the impugned award dated 11.02.2009 has directed the third respondent Insurance Company to pay the Appellant/claimant a compensation of Rs.6,000/- on lumpsum basis.

4. Aggrieved by the quantum of compensation fixed by the Tribunal, the Appellant/claimant has preferred this Appeal seeking for enhancement.

5. It was the claim of the Appellant/claimant that he suffered fracture in his right leg and shortening of right leg, due to the accident caused by the insured vehicle. Before the Tribunal, he made a claim seeking compensation of Rs.5,00,000/- for the injuries sustained by him.

6. Before the Tribunal, the Appellant/claimant has filed 10 documents which were marked as Ex.P1 to Ex.P10 and two witnesses were examined on his side namely, Mr.Pandian, the father of the Appellant/claimant as PW1 and the Doctor who examined him as PW2. On the side of the respondents, neither any document was filed nor any witness examined, before the Tribunal.

7. Since the Appellant/claimant did not file any documentary evidence like X-ray, accident register and wound certificate, the Tribunal assessed the compensation on lumpsum basis and awarded Rs.6,000/- together with interest and costs as compensation to him. However, as seen from the documents filed by the Appellant/claimant which were marked as exhibits, he has filed the disability certificate issued by the Doctor, PW3 who has assessed the disability of the Appellant/claimant at 30%. As seen from the disability certificate (Ex.P9), the Appellant/claimant has sustained fracture of right leg and there is also some shortening of his right leg. The Tribunal ought to have considered the same and should have assessed the percentage of disability. However, under the impugned Award, the Tribunal has ignored the disability certificate (Ex.P9) and has awarded the compensation to the Appellant/claimant on lumpsum basis at a meagre sum of Rs.6,000/-. There is no contra evidence produced by the respondents to disprove the disability certificate

(Ex.P9) which reveals that the Appellant/claimant has suffered fracture of right leg and some shortening of right leg.

8. This being the case, the Tribunal should have assessed the percentage of disability of the Appellant/claimant and ought to have awarded the disability compensation to him based on the assessed disability.

9. This court has perused and examined the disability certificate (Ex.P9). This Court is of the considered view that though the Appellant/claimant may not have suffered 30% disability as assessed by the Doctor (PW2), this Court will have to necessarily assess the disability as the Appellant/claimant has in fact suffered disability. After giving due consideration to the nature of injuries sustained by the Appellant/claimant, this Court fixes the percentage of disability of the Appellant/claimant at 20% instead of 30% fixed by the Tribunal. The accident happened in the year 2005. After giving due consideration to the year of the accident, this Court fixes the disability compensation payable to the Appellant/claimant at Rs.20,000/- calculated at Rs.1,000/- per percentage of disability for the 20% disability assessed by this Court.

10. The Appellant/claimant was hospitalised for a period of three days as seen from the discharge slip issued by the hospital Ex.P7. The Tribunal ought to have separately awarded compensation under various heads namely pain and suffering, transportation, extra nourishment, attender charges and loss of amenities instead of awarding the total compensation on the lumpsum basis. Accordingly, this Court awards separately a compensation of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards attender charges and Rs.5,000/- towards loss of amenities. In all put together, the Appellant/claimant is entitled to Rs.50,000/- as compensation.

11. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.6,000/- to Rs.50,000/- in the following manner:

Heads	Modified Award Amount (Rs.)
20% disability	20,000/-
Pain and suffering	10,000/-
Transportation	5,000/-

Heads	Modified Award Amount (Rs.)
Extra nourishment	5,000/-
Attender charges	5,000/-
Loss of amenities	5,000/-
Total	50,000/-

Conclusion:

12. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The third respondent is directed to deposit the modified award amount i.e., Rs.50,000/- together with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.230 of 2007 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 deposit the award amount along with accrued interest lying to the credit of MCOP.No.230 of 2007 in interest bearing fixed deposit in anyone of the Nationalized Bank till he attains majority and Mr.Pandian, the father of the minor Appellant is permitted to withdraw the interest once in six months for the welfare of the minor. If the minor Appellant attains the age of majority, It is open for the Appellant to file a formal petition before the Tribunal to declare him as a major. No costs.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Additional District Judge,
Puducherry at Karaikal

Copy To

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.S.Sounthar, Advocate SR.No.30292

+1cc to Mrs.N.B.Surekha, Advocate SR.No.30321

C.M.A.No.2570 of 2009

KK(CO)
GMY(20/04/2021)