

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1322 of 2013

M.SarathKumar (minor)
rep by his mother and next friend
Mrs.Thenmozhi ... Appellant/Claimant

Vs.

1.S.Vijay

2. The New India Assurance Company Ltd,
No.46, Moore Street,
Chennai - 1. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.3755 of 2001 dated 23.12.2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.V,) Chennai.

For Appellant : Mr. N.S.Sivakumar

For Respondents : R1 - Notice served.
R2 - M/s.S.R.Sumathy.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation.

2. This appeal has been filed against the judgment and decree made in MCOP.No.3755 of 2001 dated 23.12.2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.V,) Chennai by raising the following grounds :-

The case of the appellant is that on 26.10.2000 around 9.30am, the claimant was crossing the SN.Chetty Street, the first respondent motor cycle bearing Reg.No.TN04 X 8313 was coming from south to north with a high speed in a rash and negligent manner, hit the claimant. Due to which, the claimant sustained grievous injuries. The injured was taken to

Government Stanley Hospital and thereafter shifted to Rajiv Gandhi Government Hospital, after CT Scan for posterior interhead pelvic bleed was taken, it was found he had injuries bleeding in the brain and admitted as inpatient from 26.10.2000 to 30.01.2001 and filed claim petition claiming one lakh for the injuries sustained by the claimant. At the time of accident, the claimant was 14years and working as a two wheeler mechanic helper. After the said accident he was not in a position to do any normal work. The FIR was registered by the police in CR.No.180 of 2000, the first respondent owner of the motor cycle admitted the guilt and paid penalty.

3. The learned counsel appearing for the second respondent/insurance company denied all the averment and submitted that the claimant has to prove that the motor cycle bearing No.TN04 X 8318 has been driven by the first respondent in a rash and negligent manner.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 to Ex.P4. No oral and documentary evidence has been marked on the side of the respondents.

5. The Court below after perusing the documents came to the conclusion that the claimant failed to prove the injuries sustained by him and awarded only a sum of Rs.5,000/- towards meagre compensation with interest at 9% from the date of petition till deposit.

6. The Court below had held that the documents filed by the claimant in Ex.P3/discharge summary found some corrections in the date, name and other contents. Considering all these aspects, the tribunal comes to the conclusion, that the tribunal cannot taken into account the Ex.P3 and further observed that the age of the claimant in the claim petition has been mentioned as 14years, in the evidence of PW1/mother of the claimant has stated as 12years and on seeing the claimant he seems to be 10years. In the absence of any clear evidence with regard to the age of the claimant, the nature of the injuries sustained by him and the expenses incurred. The nature of injuries sustained by the claimant was not seriously disputed by the contesting respondent.

7. Ex.P3/discharge summary would go to show that the same was issued by the Government Hospital, Department of Neurology, in which page No.7 has been corrected as Page No.8. The age of the claimant has been wrongly mentioned as 11years and the date 26.10.2000 has been overwritten. The CT scan brain has been strikeout and written as posterior interhead pelvic bleed. In the middle of the summary it has been clearly written as CT scan

brain. Hence, the Tribunal has erred in giving the findings that the document has not been signed by the proper authority and cannot be taken into account.

8. The Doctor who treated the claimant has been examined as PW3 by the claimant, he had deposed before the Court from his evidence in cross examination it is clear the claimant had bleeding in the brain and for the said injury treatment was given to him and also stated the person had headache, giddiness, often get epilepsy and memory loss. This Court finds that the document in Ex.P3 has been issued by the Government Hospital, Department of Neuro Surgery, this Court cannot expect the claimants to get the original copy from the Government Hospital to file a claim petition. The contesting respondent has not defended the case properly to show that the documents produced by the claimant must be forged document and failed to examine the Doctor who issued the Ex.P3.

9. The Tribunal has awarded a meagre compensation of Rs.5,000/- to the claimant. In the absence any such medical bills, this Court cannot award any amount under the head medical expenses and after considering the disability certificate issued by the authority as 30% this Court is inclined to calculate the disability as 20%.

10. In view of the above said circumstances, this Court is inclined to set aside the Judgment passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.V,) Chennai in MCOP.No.3755 of 2001 dated 23.12.2005 and however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation is as follows:-

Sl.No.	Heads	Amount
1	Disability	20,000
2	Extra nourishment	3,000
3	Transportation	1,000
4	Pain and sufferings	10,000
5	Attendant charges	1,000
	Total	35,000

11. The meagre compensation of Rs.5,000/- awarded by the Tribunal is enhanced to Rs.35,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for deposit of amount is eight weeks from the date of receipt of a copy of the Judgment and on such deposit of amount, the claimant

is permitted to withdraw the entire amount by filing separate cheque application.

12. In the result, the Civil Miscellaneous appeal is allowed by modifying the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.V,) Chennai in MCOP.No.3755 of 2001 dated 23.12.2005. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
(Fast Track Court No.V,) Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mrs.S.R.Sumathy, Advocate Sr.315
+1cc to Mr.N.S.Sivakumar, Advocate Sr.1199

C.M.A.No.1322 of 2013

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