

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1600 of 2011

(Through Video Conferencing)

Minor. Ajith

(Minor Rep.by his Father, Munian)

... Appellant/ Petitioner

Vs.

1.Balasubramanian

2.The Divisional Manager,
The National Insurance Co., Ltd.,
No.19, Officers Line,
Vellore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 21.12.2010 made in M.A.C.T.O.P.No.3 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) Thiruvannamalai.

For Appellant : Ms.A.Subadra for M.Malar

For 2nd respondent : Mr.S.Arunkumar

J U D G M E N T

The appellant/claimant is aggrieved by the impugned Judgment and Decree dated 21.12.2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Thiruvannamalai in M.A.C.T.O.P.No.3 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.60,000/- as compensation together with interest at 7.5% per annum from the date of petition till the date of deposit, to the appellant/claimant. The claimant is the appellant in this appeal and is represented by his father. The claimant was aged about 8 years at the time of accident and said to have been suffered fracture of both his legs.

3. On 10.10.2007 at about 12.00 noon, when the claimant was walking on the left side of the road near Mariamman Koil in Nayanur Village on ettaialam to Tirukoliur Road, when a rider of a two wheeler bearing Reg.No.TN 32-C-7587 belonging to the 1st respondent and insured with the second respondent, drove the two wheeler in a rash and negligent manner and hit the minor appellant, due to which, the minor appellant sustained injuries on his bodies.

4. The learned counsel appearing for the appellant contended that the appellant sustained fracture of right shaft tibia, abrasions of right knee , right ankle, elbow and left side forehead. P.W.2-doctor assessed the disability of the appellant as 25% and marked the disability certificate as Ex.P5 to prove the injuries. The Tribunal without any reason reduced the disability to 5% and has awarded only a sum of Rs.20,000/- towards disability. It is submitted that the Tribunal without considering the injury of the minor appellant and awarded only a sum of Rs.20,000/- towards pain and suffering. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the driver of the offending insured vehicle did not possess a valid driving license at the time of accident and hence, the 2nd respondent is not liable to pay compensation. He further submits that the impugned order passed by the Tribunal was well reasoned and requires no interference and therefore submits that this civil miscellaneous appeal is liable to be dismissed.

6. In this appeal, it is stated that the Tribunal ought to have awarded more compensation under the head of pain and suffering. Since the appellant sustained fracture of his right shaft tibia, abrasions of right knee, right ankle, elbow and left side forehead. Therefore, it is submitted that erred in restricting the amount of compensation under the head of permanent disability of Rs.20,000/- and Rs.20,000/- towards pain and suffering. Further it is submitted that P.W.2-Doctor who assessed the disability as 25% but the Tribunal has fixed the disability as 20% .

7. I have considered the arguments advanced by the learned counsel for the appellant and the 2nd respondent Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

8. It is a pathetic case of injury to young child aged about 8 years at the time of accident who suffered injuries to his bodies. Under the Act only just compensation is to be awarded under the different heads as recognized under the common law.

9. Considering the nature of the injuries suffered by the minor appellant aged about 8 years i.e. right shaft tibia, abrasions of right knee, right ankle, elbow and left side forehead, the amount of compensation awarded is to be enhanced. Considering the above, I am inclined to enhance the compensation to Rs.1,00,000/- from Rs.60,000/- awarded by the Tribunal vide impugned Judgment and Decree. The amounts awarded by the Tribunal towards medical expenses and transportation is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
Medical expenses and Transport to Hospital	Rs. 20,000/-	Rs. 20,000/-	Confirmed
Pain and Sufferings	Rs. 20,000/-	Rs. 30,000/-	Enhanced
Permanent Disability	Rs.20,000/-	Rs.50,000/-	Enhanced
Total	Rs.60,000/-	Rs.1,00,000/-	Enhanced by another sum of Rs.40,000/-

10. Accordingly, this civil miscellaneous appeal is partly allowed and the compensation amount awarded by the Tribunal at Rs.60,000/- is hereby enhanced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

11. The 2nd respondent/Insurance Company is directed to deposit the above enhanced amount of compensation of Rs.1,00,000/-, together with interest at 7.5% from the date of the claim petition till the date of such deposit and proportionate cost, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. Liberty is given to the 2nd respondent Insurance Company to recover the amount of compensation thereafter from the 1st respondent owner of the vehicle.

12. The appellant/claimant was aged about 8 years at the time of filing of the claim petition in the year 2007 and

would have attained the age of majority as on date. Therefore, the appellant/claimant is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw the amount of compensation together with interest. No cost.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd/jen
To:

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Thiruvannamalai.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.M.Malar , Advocate SR.No. 26316
+1cc to Mr.S.Arun Kumar , Advocate SR.No. 26441
C.M.A.No.1600 of 2011
A.SK(04.01.2021)