

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1756 of 2013

S. Ajith (minor)

rep. by Father & Next Friend P. Senthil

..Appellant/
Claimant

Versus

1.Mr. K. Bharathi Raja S/o. Krishnaswamy
(R1 remained ex-parte before the Tribunal)

2.M/s. National Insurance Co. Ltd.

No.751, Anna Salai, 3rd Floor,
Chennai - 600 002.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 23.07.2009 made in M.C.O.P.No.5292 of 2005 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.M. Muthurajan

For Respondent-2 : Mr. M. Krishnamoorthy
R1 -Ex-parte

J U D G M E N T

The claimant before the Tribunal has preferred the appeal against the Judgment and order in M.C.O.P.No.5292 of 2005 dated 23.07.2009 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, seeking for enhancement of compensation.

2. The facts of the case briefly are as under:

On 11.08.2005 at about 8.30 hours, when the claimant/appellant was walking along Alandur road, a Tanker Lorry bearing registration No.TN-22-AF-0687, driven by its driver in a rash and negligent manner dashed the minor claimant/appellant herein. Due to impact of the accident, the claimant sustained grievous injuries in the accident and was admitted in the Royapettah hospital as in patient from 11.08.2005 to 20.08.2005 for treatment. In view of injuries

sustained in the accident, the minor claimant/appellant herein preferred a claim petition in M.C.O.P.No.5292 of 2005 dated 23.07.2009 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, thereby the minor claimant was awarded a sum of Rs.66,500/- (Rupees Sixty Six Thousand Five Hundred Only) as compensation. Being not satisfied with the award amount, the minor claimant/appellant herein has filed the present appeal seeking for enhancement of compensation.

3. The learned counsel appearing on behalf of the appellant submits that the Tribunal has awarded a meagre sum of Rs.66,500/- (Rupees Sixty Six Thousand and Five Hundred Only) without taking into consideration the nature of injuries suffered by the minor claimant/appellant herein in the said accident, not only his education has come to an end but also his loss of earning power is also adversely affected and thus, he is entitled to a higher amount of compensation.

4. On the other hand, the learned Counsel for the Insurance Company would submit that the minor claimant/appellant, admittedly, did not have any income as being a school student studying IInd Standard, and the loss has to be determined as on the date of accident. Hence, the award of the Tribunal should not be interfered with.

5. Heard both sides and perused the available materials on records. 1st respondent was set exparte before the Tribunal as well as before this Court since he was remained absent who is owner of the offending vehicle.

6. P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P6 were marked on the side of the appellant. None was examined and marked on the side of the respondents before the Tribunal.

7. The factum and manner of the accident being rash and negligent driving of the driver of the offending vehicle according to the findings of the Tribunal and entitlement of the minor claimant/appellant herein under Section 163A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

8. After going through the oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P6, disability certificate, and Ex.P3, Discharge summary, this Court is of the considered view that since the minor claimant/appellant was a student at the time of the accident and he had sustained laceration in the post aspect in calf leg right side and contracted skin loss and to the extent @35% permanent disability, it will be appropriate to fix Rs.2,000/- per percentage for the permanent disability @35% as certified by P.W.2 instead of Rs.1000/-per percentage fixed by the Tribunal. Thus, other heads inclusive of the compensation

under the head of permanent disability is modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent Disability @35%	70,000.00
2	Extra-nourishment	5,000.00
3	Transport Expenses to hospital	5,000.00
4	Pain, shock and Sufferings	20,000.00
5	Attendant Charges	5,000.00
6	Medical Expenses	5,000.00
Total Amount		To 1,10,000.00

9. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.43,500/- from Rs.66,500/- to Rs.1,10,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. As the appellant is minor, the Insurance Company/2nd respondent is directed to deposit the modified award amount in any nationalized bank, less already deposited amount if any, till he attains majority, within a period of four weeks from the date receipt of copy of this order and father of the minor claimant/appellant herein is entitled to withdraw the accrued interest once in three months directly from the bank for the expenses of Minor claimant/appellant herein. The minor claimant/appellant here shall pay appropriate court fee for enhancement of the compensation.

10. In the result, the appeal is partly allowed. Accordingly, the impugned award in M.C.O.P.No.5292 of 2005 passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

lbm

To:

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

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.N.M.Muthurajan, Advocate SR.15581
+1cc to Mr.M.Krishnamoorthy, Advocate SR.15389

C.M.A.No.1756 of 2013

SV(CO)
CB(28/12/2020)



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