IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.134 of 2020
and
C.M.P.No.968 of 2020

HDFC ERGO General Insurance
Company Limited
6th floor, Leela business par
Andheri, Mumbai-400 059. ... Appellant/2nd Respondent

Vs.

1.Minor Sabarinathan
(Minor rep. by his mother
Mahila, w/o.Rajan) ..1st Respondent/Petitioner

2.M/s.S.R.M.Transports India Pvt. Ltd.
SRM nagar, Kattankulathur
Chengalpet, Kancheepuram District-603 203.

3.The Managing Director
M/s.Tamil Nadu State Transport Corporation
(Madurai) Limited
Bye pass road, Madurai. .. Respondents 2 & 3/
Respondents 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2019 made in M.C.O.P.No.840 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.Somasundaar N.
For R1 : Mr.T.Gopinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 04.09.2019 made in M.C.O.P.No.840 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.840 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur. The 1st respondent, who is the minor represented by his mother/Mahila, filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.10.2014.

3.According to the 1st respondent, on the date of accident, i.e., on 26.10.2014 at about 3.15 hours, while the 1st respondent along with other passengers were travelling in the bus belonging to the 3rd respondent/Transport Corporation, which was proceeding on Trichy - Chennai National Highways road from South to North direction, near Shiek Hussainpet Girls College, Villupuram District, the driver of the another private bus belonging to the 2nd respondent insured with the appellant, which was going ahead of the Government bus, driven in a rash and negligent manner, suddenly applied brake without any signal, due to which, the Government bus belonging to the 3rd respondent dashed against the back side of the bus belonging to the 2nd respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries. Therefore, the 1st respondent filed the claim petition seeking compensation against the respondents 2 & 3 and the appellant.

4.The 2nd respondent, owner of the private bus, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and stated that the driver of the private bus belonging to the 2nd respondent drove the bus following the traffic rules and stopped his vehicle after proper signaling. The driver of the bus belonging to the 3rd respondent/Transport Corporation drove the same in a rash and negligent manner without seeing the private bus, overtaking the lorry and dashed against the private bus. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive.

6.Before the Tribunal, mother of the 1st respondent examined herself as P.W.1, one Thilagavathy, injured claimant in other M.C.O.P.No.842 of 2015 was examined as P.W.2 and marked twelve documents as Exs.P1 to P12. The disability certificate issued by the Medical Board was marked as Ex.C1. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the private bus belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said bus to pay a sum of Rs.16,70,600/- as compensation to the 1st respondent and exonerated the 3rd respondent/Transport Corporation from its liability.

8.Against the said award dated 04.09.2019 made in M.C.O.P.No.840 of 2015, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent was minor and was studying 3rd standard at the time of accident. He is not an earning member. The Tribunal without considering the same, erred in fixing a sum of Rs.12,000/- as monthly income of the 1st respondent and granted 40% enhancement towards future prospects. The 1st respondent has not suffered functional disability. The Tribunal erred in fixing 40% as loss of earning capacity for the head injuries alone and adopted multiplier method. As per the judgment of the Hon'ble Apex Court, a lumpsum compensation can be awarded for the injured minor. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal. In support of his contention, the learned counsel appearing for appellant relied on the following judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 338 (SC) (Master Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. and another):

> "12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick."

10.The learned counsel appearing for the 1st respondent/claimant made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the 1st respondent/claimant and perused the entire materials available on record.

12.It is the contention of the 1st respondent that he was a minor boy aged 7 years at the time of accident. In the accident, the 1st respondent suffered multiple injuries all over the body including head, forehead, ear, jaw, cheek and right shoulder. The 1st respondent has taken treatment as in-patient in Jipmer hospital, Pondicherry, from 26.10.2014 to 09.11.2014. Subsequently, the 1st respondent has taken treatment as in-patient in Maruthi hospital, Trichy, from 09.11.2014 to 28.11.2014, again on 09.12.2014 & 10.12.2014 and again from 21.01.2015 to 26.01.2015. The Medical Board has assessed the disability of the 1st respondent as 60% for physical impairment. The Tribunal fixed 40% as loss of earning capacity. The Tribunal considering the judgments relied on by the learned counsel appearing for the 1st respondent, adopted multiplier method to award compensation towards disability, fixed a sum of Rs.12,000/- as monthly income of the 1st respondent and granted 40% enhancement towards future prospects. The 1st respondent has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the multiplier method adopted by the Tribunal is not correct. Further the notional income of Rs.12,000/- per month and enhancement of 40% towards future prospects are not correct.

12(i) As per the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 338 (SC) (Master Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. and another) referred to above, the pecuniary damages for a minor cannot be worked out in the absence of income of the child and the child cannot be equated to non-earning member for fixing notional income as per the II Schedule. The Hon'ble Apex Court has held that consolidated compensation must be awarded for permanent disability on the basis of percentage of disability. The ratio in the said judgment is squarely applicable to the facts of present case.

12(ii) In the present case, the Medical Board has assessed the disability of the 1st respondent as 60%. The Tribunal reduced the disability to 40%. In view of the judgment of the Hon'ble Apex Court referred to above, the 1st respondent is entitled to a sum of Rs.4,00,000/- as compensation for disability including pain & suffering. The compensation awarded by the Tribunal towards loss of earning capacity by fixing

Rs.12,000/- per month, granting 40% enhancement and adopting multiplier method is set aside. Further, the amount granted by the Tribunal for pain and suffering separately is also set aside.

12(iii) A sum of Rs.10,000/- awarded by the Tribunal towards attendant charges is meagre. Considering the period of treatment taken by the 1st respondent, the compensation awarded by the Tribunal towards attendant charges is enhanced to Rs.50,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	12,09,600	-	Set aside
2.	Extra nourishment	50,000	50,000	Confirmed
3.	Pain & suffering	1,00,000	-	Set aside
4.	Transportation	50,000	50,000	Confirmed
5.	Damage to clothes	1,000	1,000	Confirmed
6.	Medical expenses	2,50,000	2,50,000	Confirmed
7.	Attendant charges	10,000	50,000	Enhanced
8.	Disability	-	4,00,000	Granted
	Total	16,70,600	8,01,000	Reduced by Rs.8,69,600/-

13.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.16,70,600/- awarded by the Tribunal is hereby reduced to Rs.8,01,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the award of the minor 1st respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the minor 1st respondent/claimant viz., Mahila, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.840 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Principal District Judge
Motor Accident Claims Tribunal
Perambalur.

+1 Cc to Mr.T.Gopinath, Advocate sr 11961.
+1 Cc to Mr.N. Somasundar, Advocate sr 11605.

C.M.A.No.134 of 2020

MR(CO)
SP(19/12/2020)