

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.259 OF 2011

Minor A.Sangeeth

(rep. By next friend and father

D.Arjunan)

(removed and impleaded as per order in

I.A.No.568 of 2005 dated 31.08.2005)

(Amended as per order in I.A. No. 589 of

2005 dated 09.09.2005)

... Appellant/Petitioner

Vs.

1.K.Murugesan

2.C.S.Nallasamy

3.The United India Insurance Co. Ltd.,

1170, Mettur Road,

II Floor, Muthiah Complex,

Erode 11.

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.10.2005, made in M.C.O.P. No. 585 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Erode.

For Appellant : Mr.D.Selvaraju

For Respondents: Ms.I.Malar (for R3)

RR1 & 2 : Not Ready in Notice

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J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 24.10.2005, made in M.C.O.P.No.585 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Erode.

2.The appellant-claimant filed M.C.O.P. No. 585 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.03.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Lorry belonging to the 2nd respondent and directed the respondents 2 and 3 as owner and insurer of the vehicle to jointly and severally pay a sum of Rs.3,54,000/- as compensation to the appellant. The Tribunal dismissed the claim petition and exonerated as against the 1st respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 24.10.2005, made in M.C.O.P. No. 585 of 2004, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the accident the appellant sustained grievous injuries. The Tribunal failed to see the amputation of the leg of the appellant. The appellant has to change the artificial leg once in two years up to the age of 23 years, which would cost Rs.2,80,458/-. The Tribunal failed to see that prospects of the appellant getting good job is diminished and the Tribunal ought to have awarded Rs.5,00,000/- for loss of earning capacity. The Tribunal failed to consider the inflation of money value while fixing the quantum of compensation. The Tribunal ought to have granted more compensation for the injuries sustained by the appellant. Due to the amputation, the marital prospects of the appellant is diminished and the Tribunal ought to have awarded compensation for the same and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal considered the amputation of the leg of the appellant below knee and the percentage of disability fixed in Workmen's Compensation Act, while awarding compensation. The Tribunal considered the entire materials on record and granted compensation under different heads, which are not meagre and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 3rd respondent and perused the materials available on record.

8. From the materials on record, it is seen that due to the injuries sustained in the accident, left leg of the appellant below knee was amputated. The appellant examined P.W.3 and P.W.4 - Doctors. P.W.4 - Doctor examined the appellant and assessed disability as 75%. The Tribunal fixed the disability of the appellant as 60% as per the Schedule entry Nos. 19, 21 and 22 of the Workmen's Compensation Act, 1993. The respondents have not disputed the fact that the leg of the appellant below the knee was amputated due to the injuries. The Tribunal has not awarded any compensation for loss of earning capacity. The Tribunal has awarded a sum of Rs.20,000/- for grievous injuries, disability and pain and suffering. The said amount is meagre. The case of granting compensation to the injured minor has been considered by the Hon'ble Apex Court in the Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., & another case, reported in 2013 (2) TN MAC 338 (SC), wherein it has been held by the Hon'ble Apex Court that for the injury sustained by the minor injured claimant who is a non-earning member, consolidated compensation must be awarded. The Hon'ble Apex Court also indicated the amounts to be awarded based on the percentage of disability sustained by the injured claimant. For 30-60% disability, the amounts to be awarded is Rs.4,00,000/-. Applying the said ratio of the Hon'ble Apex Court, the appellant is entitled to a sum of Rs.4,00,000/- towards disability, including pain and suffering, as the appellant suffered 60% disability, as confirmed by the Tribunal. The Tribunal has granted a sum of Rs.1,50,000/- for future medical expenses to replace the artificial leg up to 23 years. The appellant was 5 years at the time of accident. Considering the increase in cost of living and artificial limb has to be changed every two years, the appellant is entitled to a sum of Rs.3,00,000/- for artificial leg. The Tribunal has granted a lumpsum amount of Rs.10,000/- towards conveyance, extra nourishment and attendant charges altogether, which is meagre. Considering the nature of injuries, treatment taken, disability suffered and age of the appellant, a sum of Rs.30,000/- is granted towards conveyance, Rs.30,000/- towards extra nourishment and Rs.50,000/- towards attendant charges. The learned counsel appearing for the appellant contended that the appellant has to travel more than 10 times for replacing the artificial leg from his native place to Coimbatore, which is 90 kms away. Considering the said contention, a further sum of Rs.30,000/- is granted towards transportation. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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
1.	Compensation for the grievous injuries and the resultant disability and the pain and suffering, etc.,	25,000/-	4,00,000/-	Enhanced
2.	Compensation for loss due to amputation and amenities to the life and loss of enjoyment and happiness and other prospects of life as well as expectation of life	1,00,000/-	1,00,000/-	Confirmed
3.	Medical expenses	53,655.66/-	53,655.66/-	Confirmed
4.	Compensation for the artificial leg already fixed	15,322/-	15,322/-	Confirmed
5.	Compensation towards conveyance, extra nourishment, attendant charges, etc.	10,000/-	30,000/- 30,000/- 50,000/-	Enhanced
6.	Compensation for future medical expenses to replace artificial leg periodically till the attainment of 23 years of age	1,50,000/-	3,00,000/-	Enhanced
7.	Transportation	-	30,000/-	Granted
	Total	3,53,977.6/- - rounded off to 3,54,000/-	10,08,977.66/- rounded off to 10,09,000/-	Enhanced by Rs.6,55,000/-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,54,000/- is enhanced to Rs.10,09,000/- along with interest and costs. The respondents 2 and 3 are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 585 of 2004. On such deposit, the share of the minor appellant is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. The father of the minor appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellant. The appellant is entitled to interest from the date of filing of the appeal for Rs.6,55,000/-. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.6,55,000/-. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.D.Selvaraju, Advocate, S.R.No.23882

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.23327

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CS(CO)

CS/11/02/2021