

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2009 of 2012 and 1861 of 2013
and
MP No.1 of 2013

C.M.A. No.2009 of 2012
Mugamathu Arees (minor)
Minor Rep. By his Father
Mugamathu Iqbal Appellant /Claimant

versus

1. P.G.Sampath
2. The New India Assurance Company Limited
No.45, Moore Street,
Chennai - 600 001. Respondents/Respondent

C.M.A. No.1861 of 2013
The New India Assurance Company Limited
No.45, Moore Street,
Chennai - 600 001. Appellant /2nd Respondent

versus

1. Mugamathu Arees (minor)
Minor Rep. By his Father
Mugamathu Iqbal1st Respondent/Claimant

2. P.G.Sampath 2nd Respondents/1st Respondent
in

C.M.A. No.1861 of 2013

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.11.2011 and made in M.A.C.T.O.P. No.1126 of 2008 on the file of the Motor Accident Claims Tribunal, IV Court of Small Cause, Chennai.

C.M.A. No.2009 of 2012:

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1-Exparte
: Mr.R.Neethiperumal
for R2

C.M.A No.1861 of 2013

For Appellant : Mr. R. Neethiperumal
For Respondents : Mr. F.Terry Chella Raja
R2-Served - No appearance.

COMMON JUDGMENT

(These appeals were taken up for hearing through Video conferencing)

CMA No.2009 of 2012 has been filed by the appellant / claimant seeking enhancement of compensation under the impugned award dated 14.11.2011 passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P. No.1126 of 2008. CMA No.1861 of 2013 has been filed by the New India Assurance Company Limited, challenging the same award questioning the quantum of compensation awarded by the Tribunal.

2. The Tribunal has directed the second respondent / Insurance Company in C.M.A. No.2009 of 2012 to pay Rs.4,46,400/- together with interest at 7.5% per annum from the date of numbering i.e. from 02.04.2008 till the date of deposit and costs as compensation to the appellant/claimant for the injuries sustained by him.

3.The details of the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Education	1,00,000
Transport to Hospital	15,000
Extra nourishment	9,000
Damage to clothing	1,000
Medical expenses	1,400
Loss of amenities to life	2,00,000
Pain and suffering	40,000
Permanent disability	80,000
Total	4,46,400

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. Heard the learned counsel on both sides on both appeals.

7. The cause of the accident which resulted in the claimant sustaining injuries has not been disputed by the appellant / Insurance Company in C.M.A. No.2009 of 2012 before the Tribunal. The only question that will have to be decided by this Court is whether the quantum of compensation awarded by the Tribunal is a just compensation or to whether the claimant is entitled for enhancement of compensation.

8. The claimant was aged five years old at the time of the accident. He suffered crush injuries at right foot and loss of II, III, IV metacarpal and loss of skin and tendon. K-wire fixation was also performed on him. He had taken continuous treatment upto 31.03.2009. Before the Tribunal, discharge summary issued by the Government Stanley Hospital has also been marked as Ex.P3, which would reveal that the claimant was hospitalised for the period from 12.06.2007 to 17.07.2007. Ex.P8, Disability Certificate also confirms the injuries sustained by the claimant. The Tribunal has awarded a sum of Rs.80,000/- as Permanent Disability compensation to the claimant for the injuries sustained by him. As seen from the injuries sustained by the claimant, he will require regular and continuous medical treatment. However, the Tribunal under the impugned award has awarded only a fixed sum of Rs.80,000/- towards claimant's disability without considering the fact that the claimant will require additional expenditure towards future medical treatment. It is always difficult to accurately assess the disability compensation in case of children suffering disability on account of the accident. After giving due consideration to the age of the minor child as well as the nature of injuries sustained by him, this Court enhances the disability compensation from Rs.80,000/- to Rs.2,05,000/-. The Hon'ble Supreme Court in the case of Mallikarjun versus Divisional Manager, National Insurance Company Limited and another reported in 2014 14 SCC 396 has also observed that it is difficult to accurately assess the disability compensation for a minor child. In the reported decision, the Hon'ble Supreme Court has given guidelines for assessing the disability compensation for minor children and it varies from Rs.3,00,000/- to Rs.6,00,000/- depending on the percentage of whole body disability sustained by the minor child. In the case on hand, the appellant/claimant was aged five years old at the time of the accident and considering the nature of injuries sustained by him as evidenced by the Disability certificate(Ex.P12), this Court is of the considered view that a sum of Rs.2,05,000/- will be a just compensation for the disability sustained by the appellant / claimant. Accordingly, a sum of Rs.2,05,000/- is fixed as disability compensation by this Court.

9. The Tribunal has however erroneously awarded Rs.1,00,000/- as compensation towards loss of education to the

claimant. The claimant was only five years old at the time of the accident and therefore, the compensation towards loss of education ought not to have been granted by the Tribunal, when there is no iota of evidence placed by the claimant with that regard. Accordingly, the same is rejected by this Court and the findings of the Tribunal that the claimant is entitled to Rs.1,00,000/- as compensation towards loss of education is set aside by this Court.

10. With regard to other heads of compensation viz, Transport, Damage to clothing, Extra Nourishment, Medical expenses, Loss of amenities and Pain and suffering are concerned, this Court does not find any infirmity in the same and it is confirmed.

11. In the result, the compensation awarded by the Tribunal under the impugned award to the claimant in CMA No.2009 of 2012 is modified in the following manner and the compensation awarded to the claimant is enhanced from Rs.4,46,400/- to 4,71,400/-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Education	1,00,000	- (Rejected)
Transport to Hospital	15,000	15,000
Extra nourishment	9,000	9,000
Damage to clothing	1,000	1,000
Medical expenses	1,400	1,400
Loss of amenities to life	2,00,000	2,00,000
Pain and suffering	40,000	40,000
Permanent disability	80,000	2,05,000
Total	4,46,400	4,71,400

12. In view of the enhancement of the compensation which in the considered view of this Court is a just compensation, the appeal filed by the claimant in C.M.A.No.2009 of 2012 is partly allowed and the appeal filed by the Insurance company in CMA No.1861 of 2013 does not deserve any merit and the said appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. The appellant in C.M.A. No.1861 of 2013 / Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as awarded by this Court, less the amount, if any, already deposited, to the credit of MCOP No.1126 of 2008 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer the same in Fixed deposit in any one of the Nationalized Banks, till the minor claimant attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the minor claimant has attained the age of majority, it is open to him to file formal petition before the Tribunal to get the award amount. The appellant in C.M.A. No.2009 of 2012 is directed to pay the required Court fee for the enhanced amount.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi2
To

1. The IV Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

WEB COPY

C.M.A.Nos.2009 of 2012
and 1861 of 2013

vba[co]
srg 18/12/2020