

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.11.2020
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1886 OF 2013
AND
C.M.P.NO.5824 OF 2020

Minor.K.Rakesh
(Represented by his father and
Next Friend M.Kumaravel) .. Appellant/Petitioner

Vs.

1. Sayeelakshmi
2. Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Chennai - 600 006. .. Respondents/Respondents

(R1 was exparte in the Lower Court.
Hence, notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.02.2013 made in M.C.O.P.No.4442 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mrs.R.Sreevidhya
For R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.02.2013 made in M.C.O.P.No.4442 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.4442 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. The father of the appellant filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by his son viz., K.Rakesh, in the accident that took place on 14.10.2007.

4.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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,20,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent-owner of the vehicle on the ground that the driver of the car belonging to 1st respondent was not possessing valid driving license at the time of accident.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant was aged 3 years at the time of accident and he suffered grievous injuries. The appellant sustained fracture of both bones right forearm - non viable for which on 13.11.2007 external fixation application was done, on 20.11.2007 & 11.12.2007 flap cover inset was done at Government General Hospital and treated as inpatient from 14.10.2007 to 20.12.2007 and thereafter he was treated as outpatient till 04.12.2008. Again he was treated as inpatient in the same hospital from 19.01.2009 to 20.01.2009 and had undergone surgery tendon graft and nerve graft were done and thereafter he was treated as inpatient from 18.04.2011 to 27.04.2011 and again he continued outpatient treatment till 24.12.2012. After passing the award, the appellant was admitted in SRMC Hospital, Porur and several hospitals. To prove the same, the appellant filed C.M.P.No.5824 of 2020 to receive the additional documents to prove the treatment taken even pending appeal. Before the Tribunal, the appellant examined his father as P.W.3. The appellant suffered 60% disability and the Tribunal fixed a sum of Rs.15,000/-as annual income and awarded very meagre amount as compensation. The Tribunal ought to have fixed a sum of Rs.45,000/- as annual income of the appellant. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant was a minor aged 3 years at the time of accident, he was a non-earning member and the Tribunal has fixed a sum of Rs.15,000/- as annual income as per the II Schedule and granted compensation towards disability which is not meagre. The Tribunal considering the materials placed before it, has awarded compensation under various heads which are not meagre. The appellant has not made out any case for enhancement of compensation. As far as C.M.P.No.5824 of 2020 is concerned, the

documents filed as additional evidence has to be proved by due process and cannot be marked and prayed for dismissal of the appeal and C.M.P.No.5824 of 2020.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9.From the materials available on record, it is the contention of the appellant that in the accident he sustained fracture of both bones right forearm and multiple injuries all over his body. To prove the injuries and disability, the appellant examined his father as P.W.3 and Dr.K.J.Mathiazhagan as P.W.4. P.W.4/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.P22/disability certificate to that effect. The appellant was a minor boy aged 3 years at the time of accident. In view of the fact that appellant was a non-earning member, the Tribunal fixed a sum of Rs.15,000/- as annual income of the appellant as per II Schedule and awarded compensation towards disability by adopting multiplier method. The income so fixed in the II Schedule was considered by the Hon'ble Apex Court and this Court in number of cases. Due to passage of time and increase in cost of living in many fold, the Hon'ble Apex Court has fixed notional income of the non-earning member at Rs.30,000/- per annum. This Court fixed a sum of Rs.45,000/- as annual income in certain cases and Rs.60,000/- as annual income in some cases. Considering the year of accident and age of the appellant, it will be just and proper and in the interest of justice, the notional income of the minor appellant is fixed at Rs.45,000/- per annum. Applying the formula in the II Schedule, the compensation awarded by the Tribunal towards disability is modified to Rs.4,05,000/- [Rs.45,000/- X 15 X 60/100].

10.From the award passed by the Tribunal, it is seen that the appellant sustained fracture of both bones right forearm - non viable for which on 13.11.2007 external fixation application was done on 20.11.2007 & on 11.12.2007 flap cover inset was done at Government General Hospital and treated as inpatient from 14.10.2007 to 20.12.2007 and thereafter he was treated as outpatient till 04.12.2008. Again he was treated as inpatient in the same hospital from 19.01.2009 to 20.01.2009 and had undergone surgery tendon graft and nerve graft were done and thereafter he was treated as inpatient from 18.04.2011 to 27.04.2011 and again he continued outpatient treatment till 24.12.2012. After passing the award, the appellant was admitted in SRMC Hospital, Porur. To prove the same, the appellant filed C.M.P.No.5824 of 2020. Considering the nature of injuries and documents filed by the appellant, C.M.P.No.5824 of 2020 is ordered. Considering the nature of injuries and period of treatment taken by the

appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges and loss of amenities are meagre and the same are enhanced to Rs.25,000/-, Rs.40,000/-, Rs.35,000/- and Rs.35,000/- respectively. The Tribunal has not awarded any amount towards future medical expenses. Considering the age of the appellant and that C.M.P.No.5824 of 2020 is ordered, the appellant is entitled to a sum of Rs.50,000/- towards future medical expenses. The appellant has produced Ex.P17/Medical Bills to the tune of Rs.14,003/- and the Tribunal has awarded the said amount towards medical expenses and the same is proper. The amount awarded by the Tribunal towards pain and sufferings and damages to clothes are just and reasonable and hence, the same are confirmed.

11.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.	Disability	1,35,000/-	4,05,000/-	Enhanced
2.	Pain and sufferings	40,000/-	40,000/-	Confirmed
3.	Extra nourishment	10,000/-	40,000/-	Enhanced
4.	Transportation	10,000/-	25,000/-	Confirmed
5.	Medical expenses	14,003/-	14,003/-	Confirmed
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
7.	Attendant charges	5,000/-	35,000/-	Enhanced
8.	Loss of amenities	5,000/-	35,000/-	Enhanced
9.	Future medical expenses	-	50,000/-	Granted
	Total	Rs.2,20,003/- rounded off to Rs.2,20,000/-	Rs.6,45,003/- rounded off to Rs.6,45,000/-	enhanced by Rs.4,25,000/-

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at

Rs.2,20,000/- is hereby enhanced to Rs.6,45,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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, to the credit of M.C.O.P.No.4442 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, at the first instance and recover the same from the 1st respondent. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor appellant attains majority. On such deposit made by the Tribunal, the father of the minor appellant viz., M.Kumaravel is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant, by filing necessary applications before the Tribunal. C.M.P.No.5824 of 2020 is ordered. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk

To

1. The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer, सत्यमेव जयते
VR Section, High Court,
Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.37021
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.37196

C.M.A.No.1886 of 2013

RP(CO)
CS/18/03/2021