

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2026 of 2013

Minor Praveen
rep. By next friend and guardian, father
Barathan. ... Appellant/Petitioner

Vs.

1.Samsudeen
(R1 remained exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,
No.163, M.C. Puram,
Perambalur. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2012, made in M.C.O.P. No.564 of 2005, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal) Villupuram.

For Appellant : Ms. A. Subadra
for M/s. C & K Law Firm
For Respondents: Mr. J. Michael Visuvasam (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 30.11.2012, made in M.C.O.P. No.564 of 2005, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal) Villupuram.

2.The minor appellant, represented by his father, filed M.C.O.P. No.564 of 2005, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal) Villupuram, claiming a sum of Rs.5,00,000/-, as compensation for the injuries sustained by him in the accident that took place on 26.06.2005.

3.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 TATA Sumo Car belonging to the 1st respondent and directed the respondents as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.75,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.11.2012, made in M.C.O.P. No.564 of 2005, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the accident occurred on 26.06.2005. The appellant suffered fracture of left humerus, fracture over left femur, fracture over mandible and severe head injury. He has taken treatment as inpatient in Government Hospital, Villupuram, from 26.06.2005 to 09.07.2005 and underwent surgeries. Even after discharge, he continued treatment as outpatient. Due to the injuries, the appellant is not in a position to do his normal avocation and day-to-day affairs. The learned counsel appearing for the appellant further contended that the Tribunal erred in not awarding any amount towards future medical treatment and granted meagre amount towards extra nourishment, transportation and damages to clothes. P.W.2 - Doctor assessed that the appellant suffered 35% permanent disability. The Tribunal instead of applying multiplier method, has granted only meagre amounts as compensation. The Tribunal ought to have adopted multiplier method for computing loss of earning power. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant did not suffer any functional disability and the compensation awarded by the Tribunal under different heads is not meagre. The appellant is not entitled for any enhancement of the compensation and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that the appellant was aged 6 years at the time of accident. In the accident, the appellant suffered grievous injuries and took treatment as in-patient in Government Hospital, Villupuram from 26.06.2005 to 09.07.2005. The appellant examined P.W.2- Doctor to depose about the nature of injuries and treatment taken.

P.W.2 - Doctor assessed that the appellant suffered 35% permanent disability. The Tribunal did not grant any compensation for loss of earning power on the ground that the appellant was a Student and non-earning member. The Tribunal granted a sum of Rs.35,000/- for 35% permanent disability suffered by the appellant and awarded a total sum of Rs.75,000/- as compensation. The amounts awarded by the Tribunal for granting compensation to the injured minor is not in consonance with the judgment of the Hon'ble Apex Court reported in 2013 (2) TN MAC 338 (SC), [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., & another], 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/-. Paragraphs 12 and 13 of the said judgment is extracted as follows:

"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 upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.

13. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows: -

HEAD	COMPENSATION AMOUNT
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	Rs.25,000/-
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	Rs.25,000/-
TOTAL	Rs.3,75,000/-

9. In the present case, the appellant suffered 35% permanent disability. Applying the said ratio of the Hon'ble Apex Court cited supra, the appellant is entitled to a sum of Rs.4,00,000/- towards disability, including pain and suffering and loss of amenities, as the appellant suffered 35% disability, as confirmed by the Tribunal. In view of this Court awarding a sum of consolidated sum of Rs.4,00,000/- towards disability, including pain and suffering and loss of amenities, the amount of Rs.25,000/- awarded by the Tribunal towards pain & suffering is hereby set aside. The appellant produced Exs.P7 and P8 - medical bills and prescription for a sum of Rs.1,020.80/-. The Tribunal considering the same, has granted a sum of Rs.1,500/- towards medical expenses and the same is confirmed. The appellant took treatment as inpatient in Hospital from 26.06.2005 to 09.07.2005. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.15,000/- is awarded for attendant charges. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

10.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.	Transportation, extra nourishment & damages to clothes & articles	13,500/-	13,500/-	Confirmed
2.	Medical expenses	1,500/-	1,500/-	Confirmed
3.	Pain and suffering	25,000/-	-	Set aside
4.	Disability, pain and suffering and loss of amenities	35,000/-	4,00,000/-	Enhanced
5.	Attendant charges	-	15,000/-	Granted
	Total	75,000/-	4,30,000/-	Enhanced by Rs.3,55,000 /-

11.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.75,000/- is enhanced to Rs.4,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period viz., from 23.11.2009 to 10.08.2010, from 26.10.2010 to 10.04.2011 and from 30.06.2011 to 18.09.2011, as held by the Tribunal. The respondents 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 twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.564 of 2005. On such

deposit, the award amount is directed to be deposited in any one of the Nationalized Bank, till the minor appellant 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 directed to pay the court fee, if any, on the enhanced amount of Rs.3,55,000/-. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The I Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Villupuram.

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

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.36594

C.M.A.No.2026 of 2013

vba[co]
srg 01/02/2021

सत्यमेव जयते

WEB COPY