

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2020

PRONOUNCED ON : 03.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.772 of 2011

(Through Video Conferencing)

Minor Sumathi

Rep.by her mother next guardian
Visalatchi, Ulundurpet Taluk

... Appellant/Petitioner

vs.

1.J.Shanthi

2.The United India Insurance Company Ltd.,
No.171, E.R.K.S.Complex,
Nehruji Road, Villupuram.

... Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.446/2006 dated 07.12.2010 on the file of the Motor Accidents Claims Tribunal (II Additional Sub Court) Villupuram.

For Appellant : No Appearance

For 1st respondent : No Appearance

For 2nd Respondent : Mr.J.Michael Visuvasam

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J U D G M E N T

Though this case has been listed on several occasions, there is no representation on behalf of the appellant. Since no adverse orders are proposed to be passed against the appellant, this appeal was taken up for final hearing.

2. The claimant is the appellant in this appeal. The appellant/claimant, the was a minor aged about 15 years at the time of the accident. She met with an accident on 12.02.2006 and suffered grievous injuries. As per the claim petition, the appellant/claimant suffered the following injuries:-

- i. Crack fracture at angle for 9th rib near chest.
- ii. Irregular 3 x 2 cm lesion at lower pole of spleen.
- iii. Lt. Kidney major laceration with perinephric - chematona with homo - peritoneum.

3. Before the Tribunal, the appellant/claimant had claimed a total compensation of Rs.9,00,000/- under the following heads:-

PART - I	
i. Transport to Hospital	
ii. Extra Nourishment	Rs.3,00,000/-
iii. Damage to clothing and articles	
iv. Expenditure of medical treatment	
v. Other expenses	
PART - II	
i. Compensation for pain and sufferings	
ii. Compensation for continuing or permanent disability	Rs.6,00,000/-
iii. Compensation for loss of earning power	
Total	Rs.9,00,000/-

4. By the impugned Judgment and Decree, the Tribunal has awarded only a sum of Rs.45,000/- as compensation to the appellant/claimant, together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of deposit and costs. The amount awarded by the Tribunal are under the following heads:-

Heads	Amount
Transport to Hospital	Rs. 2,500/-
Extra Nourishment	Rs. 5,000/-
Damage to clothing and articles	Rs. 500/-
Attendant charges	Rs. 2,000/-
Pain and sufferings & Compensation for continuing and permanent disability	Rs.35,000/-
Total	Rs.45,000/-

5. Aggrieved by the same, the present Civil Miscellaneous Appeal has filed by the appellant/claimant for enhancement of compensation.

6. Heard the learned counsel for the 2nd respondent and I have perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. It is noticed that by an order dated 04.10.2018, this Court had referred the appellant/claimant for being examined by the Medical Board. The operative portion of the said order reads as under:-

3. Being an internal injury and that two of the Kidney, this Court is not able to assess the actual damage caused to the Kidney as a result of the accident. Therefore, this Court is of the view that the Appellant will have to be sent to the Medical Board for proper assessment of her Kidney.

4. Accordingly, this Court directs the Dean of the Rajiv Gandhi Government General Hospital, Chennai - 600 003 to examine the Appellant and give a Report to this Court about the present condition of her left Kidney along with all supporting reports on or before 29.10.2018.

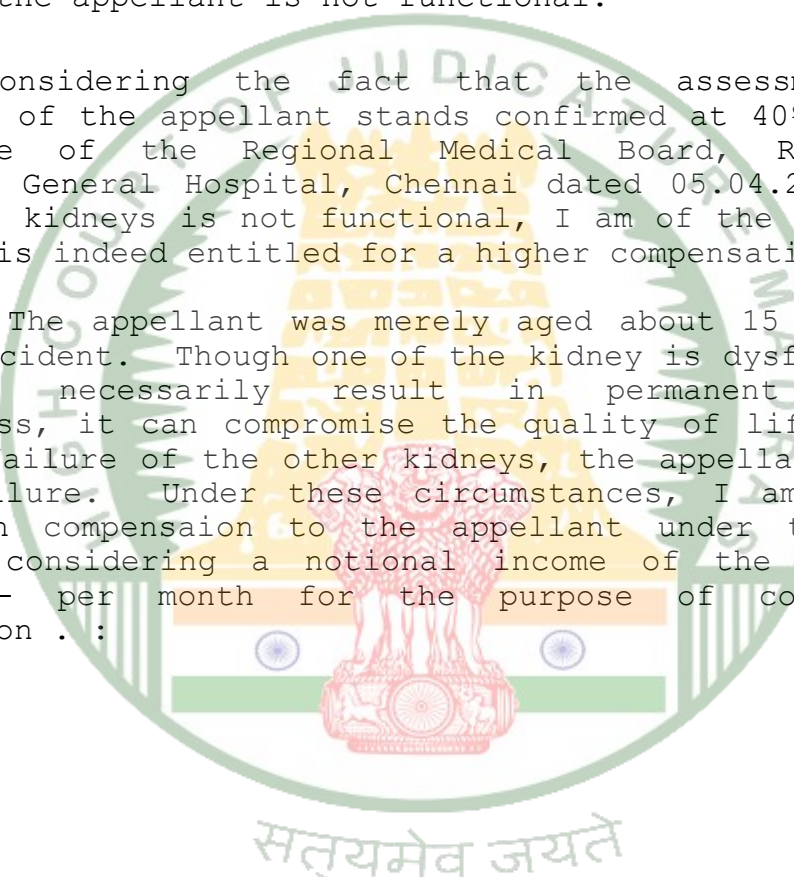
5. The Dean of the Rajiv Gandhi Government General Hospital, Chennai is also directed to

fix a Date for the Examination of the Appellant after giving sufficient opportunity to the Appellant and communicate the same to the Appellant.

8. Pursuant to the aforesaid order, the appellant/claimant also appeared before the Medical Board on 05.04.2019. The Physician, Senior Civil Surgeon, Rajiv Gandhi Govt. General Hospital, Chennai has assessed the permanent disability of the appellant/claimant as 40% and also has mentioned that one of the kidney of the appellant is not functional.

9. Considering the fact that the assessment of the disability of the appellant stands confirmed at 40%, as per the certificate of the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai dated 05.04.2019 and that one of the kidneys is not functional, I am of the view that the appellant is indeed entitled for a higher compensation.

10. The appellant was merely aged about 15 years at the time of accident. Though one of the kidney is dysfunctional and does not necessarily result in permanent disability, nevertheless, it can compromise the quality of life and in the event of failure of the other kidneys, the appellant can suffer renal failure. Under these circumstances, I am inclined to award high compensation to the appellant under the following heads by considering a notional income of the appellant as Rs.35,000/- per month for the purpose of computation of compensation . . :



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Heads and Calculation	Amount
Loss of income	
Monthly Income of the injured:Rs. 3,500	
Annual income (Rs.3500x12) : Rs. 42,000	
Multiplier18 (Rs.42,000x18) :Rs.7,56,000	
Add : Future prospects at 40%	
(Rs.6,30,000 x 40/100): Rs. 3,02,400	
 Total Rs.10,58,400	
: 40% of Rs.10,58,400 /-: Rs. 4,23,360	Rs. 4,23,360
Pain and suffering	Rs. 50,000
Towards compromise in the changes of get suitably married	Rs. 1,00,000
Transport to hospital	Rs. 2,500
Extra nourishment	Rs. 5,000
Damage to clothing and articles	Rs. 500
Attendant charges	Rs. 2,000
Total	Rs. 5,83,360 rounded off to Rs.5,85,000/-

11. Therefore, the amount of compensation of Rs.45,000/- awarded by the Tribunal is enhanced to Rs.5,85,000/-.

12. The 2nd respondent Insurance Company is therefore directed to deposit a sum of Rs.5,85,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, less any amount deposited,

within a period of six weeks from the date of receipt of a copy of this Judgment.

13. Since the appellant was aged about 15 years at time of filing of the claim petition and would have attained the age of majority, the appellant is permitted to file appropriate application for recording the age of majority and to withdraw the compensation amount together with interest thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
(II Additional Sub Court) Villupuram.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Michael Viswasam, Advocate Sr.39174
+1cc to Mr.V.S.Sivasundaram, Advocate Sr.39210

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