

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.335 & 336 of 2012

and

C.M.P. No.1 of 2011

P.Yamuna (minor) ..Appellant
(in CMA. No.335 of 2012)
(rep.by Father and next friend Mr.Perumal)

P. Kavitha ... Appellant
(in CMA.No.336 of 2012)

Versus

1.E. Sathyamurthy

2.M/s.United India Insurance Co. Ltd.

C/o. Motor Third Party Claims,

No.38, Anna Salai, Chennai- 2

(The 1st respondent was set

ex-parte before the Tribunal)

...Respondents
(in Both C.M.As)

Common Prayer: Civil Miscellaneous Appeals filed against the order and decree dated 11.08.2010 made in M.C.O.P.Nos.2895 of 2006 and 2973 of 2006 respectively on the file of the Motor Accident Claims Tribunal, Small Causes Court V, Chennai.

For Appellants : Mr.T.G. Balachandran

For 2nd Respondent : Mr.M.J. Vijayaraghavan

R1 - Ex-parte

(In both C.M.As)

C O M M O N J U D G M E N T

The petitioners/claimants before the Tribunal have preferred these appeals against the Judgment and order made in M.C.O.P.Nos.2895 of 2006 and 2973 of 2006 respectively on the file of the Motor Accident Claims Tribunal, Small Causes Court V, Chennai.

2. The appellants herein are the petitioners/claimants in the Tribunal and since these appeals are connected and arise out of one and the same accident, both appeals are disposed of by this Common Judgment.

3. The brief facts of the case is as follows:

On 01.05.2006, at about 14.30 hours, while the appellants along with others were travelling in Mahindra Van bearing Registration No.TN 09 R 0835 owned by the 1st respondent and insured with the 2nd respondent proceeding on the road at Kancheepuram to Vandavasi road near Veerampakkam Pudue Veera Anjeneyar Temple, the said van was capsized due to rash and negligent driving of its driver. In this accident, the appellants along with others have sustained injuries and they were admitted in the hospital for treatment of injuries. On account of injuries sustained by them, they have approached the Tribunal for compensation. Among those, the Appellant in C.M.A.No.335 of 2012 and the Appellant in C.M.A.No.336 were awarded for a sum of Rs.37,500/- and 30,000/- respectively on various heads by the Tribunal.

4. Not satisfied with the award passed by the Tribunal, the appellants have filed the present appeals separately seeking for enhancement of compensation of award.

5. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent/Insurance Company.

6. On perusal of the award, the aforesaid appellants being girl children in the age of 9 and 8 years respectively, had sustained injuries caused by the accident due to rash and negligent driving of the van driver. The accident was occurred during the year 2006 while they were travelling in the van.

7. The factum of the accident and the manner of the accident has to be rash and negligence and entitlement of the appellants/petitioners under Section 163A is not in dispute. Quantum of the compensation awarded by the Tribunal is alone disputed.

8. The appellant in C.M.A.No.335 of 2012 was assessed his disability @ 20% vide Ex.P29 stating that she got difficulty to raising up her right hand and turning her neck and sustained fracture of clavicle middle 1/3rd right side of the body which is grievous. Considering the above, the Tribunal has fixed disability sustained by the claimant @20% as per Ex.P29 and a sum of Rs.1,500/- is awarded for each percentage considering the tender age of the petitioner/appellant herein at the time of the accident.

9. Taking into consideration of the facts and circumstances of the case and having perused the oral and documentary evidence of P.W.13, Doctor, coupled with the Ex.P29, disability certificate, this Court is of the considered view that the disability suffered by the petitioner/appellant herein is confirmed @20% as per Ex.P29. But, a sum of Rs.2,000/- (for each percentage) is awarded instead of Rs.1,500/- awarded by the Tribunal, ie. $20 \times 2000 = 40,000/-$ towards the disability of the petitioner/appellant herein. Further, Inclusive of above, the compensation on other heads is as follows:

SL. No.	Particulars	Amount (in Rs.)
1	Disability of 20% at Rs.2000/- to the petitioner/appellant	40,000.00
2	Pain, shock and Sufferings	15,000.00
3	Damage to Cloth and articles	1000.00
4	Medical Expenses	1000.00
5	Attendant Charges	2000.00
6	Extra Nourishment	5000.00
7	Transport Expenses	3,000.00
	To	67,000.00
tal Amount		

10. Thus, the compensation of the award is modified for Rs.67,000/- instead of Rs.37,500/- awarded by the Tribunal. Hence, the appellant in C.M.A. No.335 of 2012 is entitled to withdraw the said award amount of Rs.67,000/- without filing any formal petition.

11. The appellant in C.M.A.No.336 of 2012 was assessed and her disability fixed @ 10% vide Ex.P27 stating that the fingers of the petitioner are fibrosised thereby she had difficulty in lifting heavy object and reduced the gripping strength due to amputation of her right mid finger. Taking into consideration the crush injury sustained by the petitioner with pulp loss over tip of middle finger, abrasion over index finger and multiple laceration over scalp and right mid finger was amputated, the Tribunal has fixed disability sustained by the claimant @10% as per Ex.P27 and a sum of Rs.2,000/- is awarded for each percentage considering the tender age of the petitioner/appellant herein at the time of the accident.

12. After going through oral and documentary evidence of P.W.13, Doctor, coupled with the Ex.P27, disability certificate, this Court is considered view that disability

suffered by the petitioner is confirmed @10% as per Ex.P27. But, a sum of Rs.3,000/- (for each percentage) is awarded instead of Rs.2,000/- ie. 10 X 3000= 30,000/- towards the disability of the petitioner/appellant herein. Further, Inclusive of above, the compensation on other heads is as follows:

SL. No.	Particulars	Amount (in Rs.)
1	Disability of 10% at Rs.3000/- to the petitioner/appellant	30,000.00
2	Pain, shock and Sufferings	15,000.00
3	Damage to Cloth and articles	1000.00
4	Medical Expenses	2000.00
5	Attendant Charges	2000.00
6	Extra Nourishment	5000.00
7	Transport Expenses	2000.00
Total Amount		To 57,000.00

13. Thus, the compensation of the award is modified for Rs.57,000/- instead of Rs.30,000/- awarded by the Tribunal. Hence, the appellant in C.M.A. No.336 of 2012 is entitled to withdraw the award amount of Rs.57,000/- without filing any formal petition.

14. The Insurance Company is directed to deposit the modified award amount within a period of four weeks from the date of receipt of copy of this order to the credit of the petitioners' respective M.C.O.P Nos. after deducting the amount already deposited if any. The appellants/petitioners are directed to pay deficit Court fee for the enhancement award amount and they are permitted to withdraw their respective award amount along with the interest by filing a formal petition since they have attained majority.

15. In the result, the aforesaid appeals are partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To

1.The Motor Accident Claims Tribunal,
Small Causes Court V, Chennai.

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

+2cc to Mr.Balachandran, Advocate SR.6116, 6117

+1cc to Mr.Vijayaraghavan, Advocate SR.6574

C.M.A.No.335 & 336 of 2012

and

C.M.P. No.1 of 2011

MG (CO)
CB(02/12/2020)



WEB COPY