

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2743 OF 2013

Minor Mannickam

rep by his Father & Next Friend

Mr.Babu

.. Appellant/Petitioner

Versus

1. Ismath Ali

2. The Divisional Manager,
The United India Insurance Co. Ltd.
No.46, Katpadi Road, Vellore.

.. Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed against the order and decree dated 07.07.2010 made in M.C.O.P.No.823 of 2006 on the file of the Motor Accident Claims Tribunal and Additional Principal Sub-Judge, Tiruvannamalai.

For Appellant : Mrs.Subadra
For Mrs.M Malar

For Respondent-2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For R1- Exparte सत्यमेव जयते

J U D G M E N T

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This appeal has been filed by the appellant who is the claimant before the Tribunal against the award and decree in M.C.O.P. No.823 of 2006 dated 07.07.2010 on the file of the Motor Accident Claims Tribunal and Additional Principal Sub-Judge, Tiruvannamalai.

2.The facts of the case briefly are as under:

On 19.09.2005 at about 4.30pm, while the minor claimant/appellant herein was walking on the side of Ottery Road, the first respondent driving his motor cycle bearing registration no.TN 05 L 8699 in a rash and negligent manner hit the minor claimant/appellant herein. In the result, the minor claimant/appellant herein sustained grievous injuries and was admitted in Egmore Government hospital as in-patient from 19.09.2005 to 27.09.2005 and thereafter, private hospital for various treatment and surgeries. Due to grievous Injuries in the accident, the minor claimant/appellant herein has filed claim petition before the Tribunal in M.C.O.P. No.823 of 2006 claiming for compensation of Rs.5,00,000/- (Rupees Five Lakh Only). However, the Tribunal has awarded a compensation of Rs.1,26,000/- (Rupees One Lakh Twenty Six Thousand Only) as compensation to the claimant/appellant herein.

3. Being aggrieved over the aforesaid award, the minor claimant/appellant herein has preferred the present appeal seeking for enhancement of compensation.

4. The learned counsel for the appellant would submit that the Tribunal ought to have passed award of compensation as sought by the claimant/appellant herein after considering the difficulties and sufferings sustained by the minor claimant in the accident. However, the Tribunal has awarded a meagre amount of compensation without taking into consideration the grievous injuries like abrasion over the right thigh, abrasion over the spin limber region and surgery was done as exploratory laparoscopy, ileal perforation closed after worm removal, peribulbar of 2 X 2 cm at about 50 cm from IC junction, sustained at the tender age of 9 years. Hence, this Court may be pleased to award as sought by the claimant/appellant herein.

5. On the contrary, the learned counsel for the 2nd respondent/Insurance Company would submit that the Tribunal has awarded the compensation in the aforesaid claim petition taking into consideration both oral and documentary evidences in a proper prospective which cannot be considered as meagre compensation. Further, since the appellant/claimant has not made out any case for enhancement of compensation, there is no need to interfere with the award passed by the Tribunal and prayed for dismissal of the appeal.

6. Heard, the learned counsel for both sides and perused entire oral and documentary evidence placed before this Court.

7. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not dispute. The entitlement of the claimant/appellant herein is alone disputed seeking for enhancement of compensation after considering the sufferings and difficulties attained by the claimant/appellant herein in the accident in the age of 9 years since his intestine got hole and sustained grievous injuries all over the body thereby the appellant cannot enjoy his happiest childhood age and also not able to participate actively in sports activities.

8. During the trial before the Tribunal, on the side of the appellant P.W.1 and P.W2 were examined and Ex.P1 to Ex.P9 were marked. Neither any oral evidence was let in nor any documents were marked on the side of the respondent.

9. On perusal of the entire records, the Tribunal has awarded relying on the Judgment of this Court in the case of ?J. Sai Manohar Vs. Prem Shanker Shukla and others reported in 2009920 TN MAC. On the respondent side, there is no oral evidence nor documents were marked to disprove the entitlement of the claimants/appellants herein.

10. Having considered the facts and circumstances of the case, this Court is of the considered view that the Tribunal has rightly awarded a sum of Rs.1,00,000/- fixing Rs.2000/- per percentage under the heads of permanent disability @ 50% citing the judgment of this Court. However, the compensation on other heads are considered as very meagre since the minor claimant/appellant herein who was at the age of 9 years studying IVth Standard, has sustained grievous injuries in the result he got hole in the intestine for which surgery was also done to him, therefore, he would not have continued his studies during the period of treatment; he should have been taken care by family members and others; he would have attained more sufferings and difficulties to do his daily activities. Hence, the claimant is entitled to receive the compensation under the head of loss of amenities and loss of studies.

11. In view of the above said facts and circumstances of the case, this Court is of the view to increase the compensation on other heads after taking into consideration the age and study of the claimant/appellant herein as well as injuries and pain and sufferings in the tender age. Accordingly, the compensation awarded by the Tribunal is modified as per the details given below:

SL.No.	Particulars	Amount (in Rs.)
1	Permanent Disability @50%	1,00,000.00
2	Pain and sufferings	30,000.00
3	Extra Nourishment	10,000.00
4	Loss of Studies	5,000.00
5	Loss of amenities	50,000.00
6	Transport Expenses	10,000.00
7	Attendant Charges	5,000.00
Total Amount		2,10,000.00

12.Thus, the minor claimant/appellant herein is awarded compensation of Rs.2,10,000/- along with interest @ 7.5% p.a. from the date of petition till the date of deposit. The Insurance Company is directed to deposit the aforesaid award amount in any nationalized bank till he attains majority within a period of four weeks from the date of receipt of copy of this Judgment after deducting already deposited amount if any. The father of the minor is entitled to withdraw the accrued interest quarterly on the deposit for the expenses of minor son.

13. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P.No.823 of 2006 dated 07.07.2010. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

lbm

To:

1. The Additional Principal Sub-Judge,
Motor Accident Claims Tribunal, Tiruvannamalai.
2. The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.12526

+1cc to Mrs.M.Malar, Advocate, S.R.No.12455

C.M.A.No.2743 of 2013

SVI (CO)
CS/16/04/2021