

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1808 of 2016

Minor Mohan .. Appellant/Claimant
(Minor rep by his natural guardian and
next friend mother Sundhari)

Vs.

1.Murugan
2.The Divisional Manager,
The National Insurance Company Ltd.,
No.19, Officer's Line,
Vellore. ... Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.12.2012 made in M.C.O.P.No.366 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Thiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja
For Respondents : Mr.D.Bhaskaran for R2
R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 10.12.2012 made in M.C.O.P.No.366 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Thiruvannamalai.

2. The appellant is the claimant in M.C.O.P.No.366 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Thiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.03.2003

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle, belonging to the first respondent and directed the second

respondent being insurer of the vehicle to pay a sum of Rs.85,000/- as compensation to the appellant at the first instance and recover the same from the first respondent/owner of the offending vehicle. .

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

5. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of P.W.1 and P.W.2 -Doctor and the documents marked through them and awarded only meagre sum of Rs.85,000/- as compensation. The Tribunal failed to consider the nature of injuries. In the accident, the appellant sustained fracture of both bones in left leg. Initially, the appellant has taken treatment from 01.03.2008 to 04.03.2008 as inpatient in Government Hospital, Chennai and further has taken treatment as out patient in the same Hospital and in other private Hospitals. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. P.W.2 Doctor deposed that fracture is malunited with bended shape and movements are restricted. The appellant is limping while walking. The Tribunal ought to have applied multiplier method and granted compensation. The Tribunal has not awarded any amount towards damage to cloth and articles, attendant charges, medical expenses, future medical expenses, mental agony and loss of amenities. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6. Per contra, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by applying multiplier method. The Tribunal has accepted the disability certificate assessed by the P.W.2/Doctor and awarded a sum of Rs.50,000/- towards disability, which is proper. The Tribunal after considering the materials available on record, has awarded compensation under different heads, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.

8. It is the contention of the appellant that in the accident, he sustained fracture of both bones in left leg. To substantiate the injuries sustained by him, he has examined Dr. Ravindran as P.W.2, who assessed the disability of the

appellant as 25% and Ex.P8/disability certificate was marked to prove the same. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation by applying multiplier method. The Tribunal has accepted the percentage of disability assessed by the Doctor and awarded a sum of Rs.50,000/- towards disability and the same is proper. The Tribunal has awarded a sum of Rs.5,000/- and Rs.25,000/- towards extra nourishment and pain and sufferings. Considering the age of the appellant, the amounts granted by the Tribunal for extra nourishment and pain and suffering are enhanced to Rs.25,000/- and Rs.50,000/- respectively. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant has taken treatment as in-patient at Government General Hospital, Chennai from 01.03.2008 to 04.03.2008. The minor appellant suffered fracture of both bone in left leg and limbing while walking. Considering the nature of injuries and age of the appellant, a sum of Rs.25,000/- is awarded towards loss of amenities and a sum of Rs.5,000/- is awarded towards attendant charges. The appellant claimed a sum of Rs.1,00,000/- towards medical expenses. The Tribunal has not awarded any amounts as the appellant has not filed any document. Though the appellant has taken treatment in Government Hospital, he would have spent some amount for his treatment. Hence, a sum of Rs.15,000/- is granted towards medical expenses. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. 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	50,000/-	50,000/-	Confirmed
2.	Pain & sufferings	25,000/-	50,000/-	Enhanced
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	5,000/-	25,000/-	Enhanced
5.	Attendant charges	-	5,000/-	Granted
6.	Loss of amenities	-	25,000/-	Granted

7.	Medical expenses	-	15,000/-	
	Total	Rs.85,000/-	Rs.1,75,000/-	Enhanced by Rs.90,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.85,000/- is hereby enhanced to Rs.1,75,000/- 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 Court fee, if any on the enhanced amount of compensation. The second respondent 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.366 of 2008 at the first instance and recover the same from the first respondent. On such deposit made by the second respondent, the Tribunal is directed to deposit the award amount in any of the Nationalized Banks, till the minor appellant attains majority. The mother of the minor appellant/guardian is permitted to withdraw the interest, once in three months for the welfare of the minor appellant. It is made clear that the appellant is not be entitled for any interest for the delay period on the amount of Rs.90,000/- enhanced by this Court as per the order of this Court dated 08.08.2016 in M.P.No.1 of 2015 in C.M.A.SR.No.68310 of 2014. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 12953

+1cc to Mr.M.Malar, Advocate, S.R.No. 13793

C.M.A.No.1808 of 2016

VD (CO)

GN(27/04/2021)