

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3544 of 2013

S. Kishorekumar (Minor)

Rep. By his Father Selvaraj

.. Appellant /Claimant

Vs.

1.M/s.Parveen Travels (P) Ltd.,
115/6, Santha Vellore Village,
S.V.Chatram, Sriperumputhur Taluk,
Kanchipuram District.

(R1 was set exparte in the Trial Court)

2.The New India Assurance Co., Ltd.,
68, Purasawalkam High Road,
Chennai 600 007.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.12.2011, made in M.C.O.P. No.413 of 2009, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. K.V. Muthuvisakan

For Respondents: Mr. R.Neethe Perumal (For R2)

R1 : Exparte before the Tribunal

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 03.12.2011, made in M.C.O.P. No.413 of 2009, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.413 of 2009, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.12.2008.

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 Bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.6,84,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 03.12.2011, made in M.C.O.P. No.413 of 2009, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant was aged 13 years studying 8th standard at the time of accident. In the accident, the appellant suffered severe head injury, crush injury in the right foot, ankle, and foot dorsum completely exposed and grade III Compound fracture both bone right leg and external fixation and S.S.G. done and multiple injuries all over the body and underwent surgeries. The learned counsel appearing for the appellant further contended that the appellant has taken treatment as in-patient continuously for a period of 4 years on two occasions viz., at Ramarau Polyclinic from 12.12.2008 to 22.12.2008, at M.N.Orthopaedic Hospital from 01.02.2009 to 04.02.2009. The appellant has produced Ex.P2 - discharge summary showing that up to 17.10.2011, he has taken treatment as out-patient and Ex.P4-discharge summary shows that he has taken continuous treatment at the M.N.Orthopaedic Hospital from 28.08.2009 to 31.08.2009. To prove the nature of injuries, the appellant examined P.W.2 - Doctor, who deposed that the appellant suffered 50% permanent disability for fracture of right leg and crush injury in the right foot. The minor appellant suffered permanent disability in his right leg and he could not do any work in the standing position. He lost amenities and education. Hence, the amounts awarded by the Tribunal towards pain and suffering, transportation, extra nourishment, medical expenses and attendant charges are meagre. The Tribunal has not awarded any amount for mental agony, loss of earning power and future medical expenses and prayed for enhancement of the total compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries, evidence of P.W.2 - Doctor and documents filed, awarded compensation excessively. The amounts awarded by the Tribunal towards loss of education and loss of amenities are excessive. The appellant is minor non earning member and he is not entitled to any compensation for loss of earning power. In view of the excess amount granted for education and loss of amenities, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that he suffered head injury, fracture in right leg and injuries all over the body. Due to the injuries and fracture in the leg, he could not continue his studies for one year and could not lead his normal life. To substantiate this contention, the father of the appellant was examined as P.W.1 and Doctor was examined as P.W.2 Doctor. P.W.2 Doctor deposed the nature of injuries and treatment taken by the appellant. P.W.2 Doctor deposed that the appellant underwent surgeries and could not walk on bare foot, he has to wear special shoes for walking, his foot movements were completely reduced and certified that the appellant suffered 50% disability. The appellant filed Ex.P10 - Handicap Certificate issued by the Government Peripheral Hospital to show his disability. From the nature of disability as deposed by P.W.2 Doctor and the documents relied on by the appellant, it is seen that the appellant's normal life is affected and in future, his earning capacity will be reduced. In such circumstances, the appellant is entitled to compensation by adopting multiplier method for 50% disability, instead of granting compensation by percentage method, as adopted by the Tribunal. The appellant was minor aged 13 years at the time of accident. As per II Schedule, the annual income of the non-earning member is fixed at Rs.15,000/-. The Hon'ble Apex Court, due to passage of time has enhanced the annual income of the non-earning member as Rs.30,000/-. Applying the said principle, a sum of Rs.30,000/- is fixed as annual income of the appellant and applying the multiplier '15' as per II Schedule, the compensation awarded by the Tribunal towards permanent disability is enhanced to Rs.2,25,000/- [Rs.30,000/- x 15 x 50%]. The appellant has contended that he has taken treatment for a period of 25 days as in-patient and has taken treatment as out-patient till 17.11.2011. Considering the period of treatment as in-patient, out-patient and the age of the appellant, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.35,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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.	Loss of education	2,00,000/-	2,00,000/-	Confirmed

2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	15,000/-	35,000/-	enhanced
4.	Damage to clothing	1,000/-	1,000/-	Confirmed
5.	Medical expenses	1,38,000/-	1,38,000/-	Confirmed
6.	Attendant charges	20,000/-	35,000/-	Enhanced
7.	Loss of amenities	1,50,000/-	1,50,000/-	Confirmed
8.	Pain and sufferings	50,000/-	50,000/-	Confirmed
9.	Permanent disability	1,00,000/-	2,25,000/-	Enhanced
	Total	6,84,000/-	8,44,000/-	Enhanced by Rs.1,60,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,84,000/- is enhanced to Rs.8,44,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.413 of 2009. On such deposit, the award amount is directed to be deposited in any one of the Nationalized Banks, till the minor 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.1,60,000/-. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No. 33684

C.M.A.No.3544 of 2013

VBA (CO)
GN(11/05/2021)



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