

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3608 OF 2013

Minor N. Dhanasekar

(Rep. By his Mother/Natural Guardian N. Vijaya)

...Appellant/Claimant

Versus

1.M. Sundaram

2.Reliance General Insurance Co. Ltd.,

Reliance Towers,

Anna Salai, Chennai - 600 002.

(The 1st respondent was set ex-parte before the Tribunal)

..Respondents/Respondent

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the order and decree dated 12.07.2013 made in M.C.O.P.No.1 of 2009 on the file of the Motor Accident Claims Tribunal, (IInd Additional District Court), Poonamallee.

For Appellant : Mr.K. Varada Kamaraj

For Respondent-2 : Mr.S. Arun Kumar

R1 - Exparte

J U D G M E N T

This appeal arises out of M.C.O.P. No.1 of 2009 dated 12.07.2013 on the file of the Motor Accident Claims Tribunal, (IInd Additional District Court), Poonamallee.

2. The minor appellant herein is the claimant and the 1st respondent herein is the owner of the offending vehicle and 2nd respondent is the insurer of the offending vehicle.

3. This appeal is filed by the minor claimant representing by his mother, having not satisfied with the award passed by the Tribunal and seeking for enhancement of the compensation. The case of the petitioner is that on 27.10.2008 at about 11.00 hours, when the minor the appellant/petitioner was standing on Avadi-Poonamallee road, opposite to Madhan Marriage hall, at that time, the 1st respondent driving his motor cycle bearing Registration No.TN-20-AE-4257 in rash and negligent manner hit the minor appellant herein and caused to the accident. Due to the impact of the accident, the appellant sustained grievous injuries all over his body. In view of the mishap, the appellant has filed claim petition in M.C.O.P. No.1 of 2009 seeking for compensation of Rs.3,00,000/- (Rupees Three lakh only) before the Tribunal.

4. On consideration of the materials and evidence available on the record, the Tribunal has awarded a total compensation of Rs.58,875/- (Rupees Fifty Eight Thousand Eight Hundred and Seventy Five Only) to the appellant along with interest @ 7.5% p.a. from the date of filing the petition till the date of the deposit of the payment.

5. Aggrieved over the same, the minor claimant has filed the present appeal seeking for enhancement of the compensation awarded by the tribunal.

6. The learned counsel for the appellant would submit that the Tribunal has awarded a meagre sum of Rs.58,875/- (Rupees Fifty Eight Thousand Eight Hundred and Seventy Five Only) without considering the injuries sustained by the appellant in the tender age and permanent disability @20% certified by the P.W.2 and medical expenses incurred during the treatment. Even though the P.W.2, Dr.V.R. Subramaniam had certified the appellant's permanent disability @20% under Ex.P7, the Tribunal has fixed the permanent disability @15% instead of 20%. The minor appellant sustained multiple and grievous injuries having fractured his right leg due to rash and negligent driving of the driver of the offending vehicle. Being a child, he would not enjoy his childhood activities in participating sports and other games. Hence, this Court may be pleased to increase the compensation as prayed for.

7. On the contrary, the learned counsel for the 2nd respondent/Insurance company would submit that the claimant has sustained simple injuries having permanent disability to 20% as certified by P.W2. However, the Tribunal has reduced to 15%

considering the oral and documentary evidence, P.W.2 and Ex.P7 respectively, there would be 5% error in fixing the disablement of the appellant herein. Further, the Tribunal has awarded the compensation of Rs.58,875/- to the minor petitioner/appellant herein rightly after perusing entire oral and documentary evidence let in by both parties. Hence, there is no need to interfere with the award passed by the Tribunal and the appeal filed by the appellant is liable to be set aside.

8. Heard the learned counsel appearing for both sides and perused the available materials on records. During the trial, P.W.1, father of the claimant and P.W.2, Doctor were examined and Ex.P1 to Ex.P8 were marked on the side of the petitioner. R.W.1 / Officer of RTO was examined and Ex.R1/Driving licence was marked on the side of the respondents.

9. The factum and the manner of the accident has to be rash and negligence and entitlement of the claimant/appellant herein under Section 163A is not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

10. After going through oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P7, disability certificate, this Court is of the considered view that permanent disability shall be @20% as certified by the Dr.V.R. Subramaniam and need not necessary to reduce to 15%. However, the amount of Rs.2000/- per percentage would be taken as fixed by the Tribunal. Thus, Rs.40,000/- (Rs.2000 X 20%) is granted as compensation towards permanent disability. Further, the compensation on medical expenses of Rs.5,875/- and Transport expenses have been awarded by the Tribunal properly as per the norms. However, as a 10 years old boy who has sustained multiple and grievous injuries all over body and left leg has been fractured in the aforesaid accident, would have suffered by more pain and would have taken more nutrition to get well. Hence, the compensation of Rs.15,000/- towards Pain and suffering and Rs.3,000/- towards loss of extra nourishment have been increased to Rs.20,000/- and Rs.5,000/- respectively. Further, the Tribunal has not awarded any compensation towards attendant charges. Since the minor appellant sustained injuries in the accident, he would have to be taken care by attender, hence, a sum of Rs.10,000/- is awarded towards attendant charges. Thus, a total sum of Rs.95,875/- is granted as compensation to the minor appellant instead of Rs.58,875/- as per details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent disability @20%	40,000.00
2	Medical expenses	5,875.00
3	Pain and Sufferings	20,000.00
4	Transport Expenses	15,000.00
5	Extra nourishments	5,000.00
6	Attendant Charges	10,000.00
Total Amount		95,875.00

11. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.37,000/- from Rs.58,875/- to Rs.95,875/- with interest @ 7.5% per annum from the date of petition till the date of realization. Since the claimant is minor, the Insurance Company is directed to deposit the award amount enhanced by this Court in any Nationalized Bank till he attains majority within a period of three months from the date of receipt of copy of the Judgment. The mother of the minor claimant is entitled to receive the accrued interest on deposit once in three months towards personal expenses of the minor claimant.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lbm

To

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
(IIInd Additional District Court), Poonamallee.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.10363

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.11067

C.M.A.No.3608 of 2013

SV(CO)

CS/19/03/2021