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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3092 of 2019

Minor Guna

Rep. by his next friend father Gandhi

.. Appellant/Petitioner

Vs.

1. M.Sivakumar

2. The General Manager,
Tata AIG General Insurance Company Limited,
No.1, Ethiraj Salai,
Egmore, Chennai.

.. 1 & 2 Respondents/1 & 2 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 04.01.2019, made in M.C.O.P.No.863 of 2013, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant : Ms.M.Malar

For Respondent 1 : Ex parte

For Respondent 2 : Mr.K.Vinod

J U D G M E N T

Feeling not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this appeal are as follows:

(i) The appellant/claimant was a 10 years old school going student. On 23.09.2012, at about 07.00 p.m., while he was participating in Vinayagar Statue procession at Anganathavalasi village at Tirupattur taluk, a two wheeler bearing registration No.TN-23-BR-4404 owned by the first respondent, which was



insured with the second respondent/insurance company, came in a rash and negligent manner and dashed against the appellant/claimant.

(ii) In the said accident, the appellant/claimant sustained multiple fractures in the leg. He was immediately taken to the hospital and he had undergone a surgery for fracture. After recovery, due to depressed leg, he was not able to walk properly. In the said circumstances, claiming a sum of Rs.5,00,000/- as compensation, he filed the claim petition before the Tribunal.

3. The first respondent / owner of the offending vehicle remained ex parte before the Tribunal. The second respondent / insurance company contested the claim petition on the ground that the accident had taken place due to the negligence of the appellant/claimant and no liability can be fixed on the driver of the two wheeler and the appellant/claimant only suffered minor fracture and the compensation claimed is highly excessive.

4. In order to prove the claim, the appellant/claimant examined one Mr.Gandhi as P.W.1 and marked as many as thirteen documents as Exs.P1 to P13. On the side of the respondents, two witnesses were examined and as many as four documents were marked as Exs.R1 to R4.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the rider of the two wheeler and hence fixed the liability on the respondents. So far as the quantum of compensation is concerned, the appellant/claimant was assessed by the Medical Board and the Medical Board fixed his disability at 35% and the Tribunal has awarded a sum of Rs.1,22,500/- towards disability; Rs.75,000/- towards pain and sufferings; Rs.5,000/- towards extra nourishment; Rs.5,000/- towards attender charges; Rs.190/- towards medical expenses and Rs.25,000/- towards loss of amenities, thus, totalling a sum of Rs.2,32,690/- was awarded as compensation. Being aggrieved over the same, the appellant / claimant is before this Court with this appeal seeking enhancement.

6. Heard the learned counsel on either side and also perused the records carefully.

7. The appellant/claimant was 10 years old school going boy. In the accident, he suffered fracture in the left leg and had undergone surgery at the Government Hospital. The Tribunal referred the appellant/claimant to assess the disability, wherein, the Medical Board assessed the disability at 35% as follows:



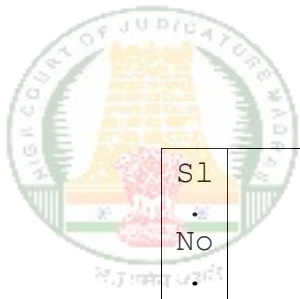
- "(i) O/E old healed scar left leg;
(ii) Depressed left leg;
(iii) Ankle Rom normal; and
(iv) walking with mild limping"

The report of the Medical Board has been marked as Ex.P13.

8. Perusal of the records would show that after treatment, the appellant/claimant has depressed left leg and he was able to walk with mild limping. At any rate it cannot be taken as permanent disability. It can only be treated as partial permanent disability and it is not a fit case to apply multiplier method. The appellant/claimant is a minor boy and he is now having difficulty in walking. Hence, a sum of Rs.4,000/- can be awarded for each percentage of disability. Therefore, for partial permanent disability, the appellant/claimant is entitled for a sum of Rs.1,40,000/- (Rs.4,000 x 35) instead of Rs.1,22,500/- awarded by the Tribunal. So far as pain and suffering is concerned, the Tribunal has awarded a sum of Rs.75,000/- which is fair and need not be interfered with. The appellant/claimant had undergone surgery and for taking extra nourishment a sum of Rs.30,000/- is now awarded instead of Rs.5,000/- awarded by the Tribunal. Towards attender charges a sum of Rs.25,000/- is now awarded instead of Rs.5,000/- awarded by the Tribunal. As far as loss of amenities is concerned, perusal of records it could be seen that the appellant/claimant had suffered injuries in the left leg and now he is not able to walk properly and he is walking with mild limping, therefore, this Court is of the view that a sum of Rs.1,25,000/- can be awarded towards loss of amenities instead of Rs.25,000/- awarded by the Tribunal. Towards medical expenses and transport charges a sum of Rs.5,000/- is awarded.

9. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Partial permanent Disability	1,22,500	1,40,000	Enhanced
2.	Pain and suffering	75,000	75,000	Confirmed
3.	Extra nourishment	5,000	30,000	Enhanced
4.	Attender charges	5,000	25,000	Enhanced
5.	Transport & Medical expenses	190	5,000	Enhanced



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Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
6.	loss of amenities	25,000	1,25,000	Enhanced
	Total	2,32,690	4,00,000	Enhanced by Rs.1,67,310/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,32,690/- is hereby enhanced to Rs.4,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent / insurance company 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.863 of 2013, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tirupattur. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/ claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court, Tirupattur.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No. 36868

C.M.A.No.3092 of 2019

VG II(CO)

GN(09/07/2021)