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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11..12..2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1657 of 2020

Muthamil Selvam (Minior)

Rep. by his Father and Natural Guardian,
the 1st petitioner - Gangadurai

... Appellant/Claimant

-Versus-

1.P.Gangadurai

2.Shri Ram General Insurance Company Limited,
"Dreams Dugar", 5th Floor,
No.149, Greams Road,
Chennai 600 006.

... Respondents/Respondents

(R1-Remained exparte before Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 09.10.2019 made in M.C.O.P.No.230 of 2015 by the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate), Perambalur, Perambalur District.

For Appellant : Mr.S.Kamadevan

For Respondents : Mr.K.Poomalai for R2

For R1 : Exparte

JUDGEMENT

The minor claimant, who sustained injuries in the motor accident, feeling dissatisfied with the quantum of compensation granted by the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate) at Perambalur has come forward with this Civil Miscellaneous Appeal seeking enhancement of compensation.



2. It is the case of the appellant/claimant that on 10.11.2014 he boarded an autorickshaw bearing Regn. No. TN 46 B 6678, owned by the 1st respondent and insured with the 2nd respondent. While the autorickshaw was proceeding on Kalpadi - Erayasamuthiram road, at about 07.40 a.m. the auto capsized on the road side due to the rash and negligence driving of the driver of the auto driver as a result of which the appellant sustained various fractures and multiple grievous injuries all over the body. He was immediately taken to Government Hospital at Perambalur where he was given first aid. Then he was shifted to Kauvery Hospital for further treatment, where he was admitted as inpatient and had taken treatment from 10.11.2014 to 20.11.2014. Though he was discharged after treatment, he has been taking treatment for the injuries till date. Due to the fractures, he suffered permanent disability and he could not climb stairs and walk properly. He had to spend huge amount towards medical expenses. Hence, claiming compensation of Rs.15,00,000/- he filed the claim petition against the respondents herein.

3. The 1st respondent, owner of the autorickshaw, was remained absent and therefore, he was set ex parte before the tribunal. The 2nd respondent insurance company filed their counter affidavit contending that the accident was taken place due to the negligent driving of the driver of the autorickshaw without following the traffic rules and regulations. On the date of accident, the autorickshaw was not covered by an insurance policy. Therefore, the 2nd respondent contended that they are not liable to compensate the injured minor claimant. The 2nd respondent also disputed the disability suffered by the injured and the medical expenses said to have been incurred.

4. Before the tribunal, in order to prove the case, on the side of the appellant/claimant, the father of the injured claimant was examined as P.W.1 and one Stalin, who was traveling in the autorickshaw at time of accident was examined as P.W.2 and as many as 13 documents were marked as Exs.P.1 to P.13. On the other side, the 2nd respondent examined one Mr.K.Jayaraman, the then Junior Assistant in the Office of the Regional Transport Authority at Perambalur was examined as R.W.1 and one Mr.Kalimuthu, the Law Officer at Madurai Branch of the 2nd respondent insurance company was examined as R.W.2 and as many as 4 documents were marked as Exs.R.1 to R.4. The disability certificate issued by the District Medical Board was marked as Ex.C.1.



5. On considering the materials placed on record, the tribunal has held that the accident was taken place due to the rash and negligent driving of the driver of the autorickshaw. The tribunal further held that the driver allowed more number of passengers to travel in the autorickshaw and thereby violated the terms and conditions of the policy. Though it was found that there was a valid policy coverage on the date of accident, the tribunal fixed the liability on the the owner of the autorickshaw for violation of the policy condition. However, as there was valid policy coverage on the date of accident and there was only a violation of policy condition, the tribunal directed the 2nd respondent to compensate the injured first and thereafter recover the same from the owner of the autorickshaw. Insofar as the quantum compensation is concerned, the tribunal awarded a sum of Rs.3,11,500/- as compensation. The details of the compensation awarded by the tribunal under various heads are as follows:-

1.	Pain and Sufferings	10,000
2.	Nutritious Food and Transport Expenses	15,000
3.	Mental Agony	5,000
4.	Attender Charges	10,000
5.	Medical Bills	1,96,500
6.	Disability	75,000
	Total	3,11,500

Being dissatisfied with the quantum of compensation, the claimant have preferred the instant appeal.

6. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and also perused the records carefully.

7. The learned counsel for the appellant would vehemently contend that the appellant was aged about 15 years at the time of accident. The appellant suffered fractures on pelvic region. The petitioner was assessed to have suffered partial permanent disability to the extent of 25% by the District Medical Board. The appellant has not fully recovered from the injuries and he will never fully recover. The appellant was an active person before the accident and he was very much interested in sports from his childhood. Now, due to the injuries, he is now unable to walk and run as before. The tribunal failed to consider the consequence of the injuries and awarded only a sum of



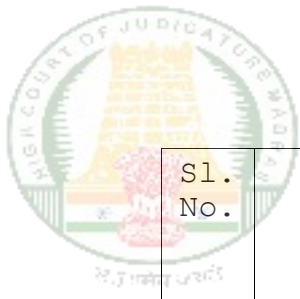
Rs.75,000/- at the rate of Rs.3,000/- for each percentage of disability which is on the lower side and not adequate.

8. The learned counsel further submitted that the compensation of Rs.10,000/- towards pain and sufferings, Rs.15,000/- towards nutritious food and transport expenses and Rs.5,000 towards mental agony are all very meager and the appellant is entitled for higher amount as compensation under these heads.

9. Per contra, the learned counsel appearing for the 2nd respondent vehemently contended that the tribunal considering the fact that the appellant was a school going boy at the time of accident and the nature of injuries and also the period of hospitalization, awarded fair and reasonable amount as compensation for the disability besides compensation on conventional heads which do not call for any interference by this court.

10. I have considered the rival submissions carefully.

11. The accident was taken place on 10.11.2014. The appellant was 15 years old at the time of accident. The discharge summary and wound certificate issued by the Kauvery Hospital were marked as Ex.P.3 and Ex.P.4 respectively. The scan report and medical bills were marked under Ex.P.5 and Ex.P.6. In the accident, he had suffered fractures on pelvic area. More specially, he had suffered fracture of superior and pubic ramus on both sides, fracture of pubic bone on right side with pubic diastasis, fracture of neck of femur on right side and fracture of left sacrum and left side sacral plexus injury in S2, S3 and S4 nerve roots, right hip joint and hip pubic besides multiple injuries all over the body. The medical evidence would show that the appellant could not run or walk properly as before as a consequence of injury due to fracture of bones on hip region. P.W.1 in his evidence stated that the appellant was active in sports. The disability suffered by the appellant is not seriously disputed by the other side. In the case of child victim, while assessing the pecuniary damages, the tribunal/courts should take into consideration the mental and physical shock suffered by the minor, pain and sufferings undergone and also the loss of amenities like difficulty in running, participation in active sports, etc. damages on account of inconvenience, hardship, discomfort, disappointment, frustration. The Hon'ble Supreme Court in Master Mallikarjun v. National Insurance Co. Ltd., 2014 (14) SCC 396 has held as



Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Pain and Sufferings	10,000	50,000	Enhanced
2.	Nutritious Food and Transport Expenses	15,000	25,000	Enhanced
3.	Mental Agony	5,000	25,000	Enhanced
4.	Attender Charges	10,000	10,000	Confirmed
5.	Medical Bills	1,96,500	1,96,500	Confirmed
6.	Permanent Disability / Loss of Amenities	75,000	3,00,000	Enhanced
	Total	3,11,500	6,06,500	
	Rounded up to	3,11,500	6,10,000	Enhanced by Rs.2,98,500

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,11,500/- awarded by the Tribunal is hereby enhanced to Rs.6,10,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above together with interest and costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant was claimed to be 15 years old at the time of accident. Now, we are in 2020 and the appellant would have attained majority by this time. Therefore, on such deposit of compensation directed by this court, it will be open to the appellant to approach the tribunal for appropriate orders on withdrawal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk



To

1.The Motor Accidents Claims Tribunal
(Court of Chief Judicial Magistrate),
Perambalur, Perambalur District.

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

+lcc to Mr.S.Kamadevan, Advocate, S.R.No.40576

+lcc to Ms.K.Poomalai, Advocate, S.R.No.40301

C.M.A.No.1657 of 2020

GJ(CO)
CB(16/11/2021)