

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3015 of 2019

Minor A.Pranavu
S/o.N.F.Anathakumar
Minor Appellant Represented by his
father and Next Friend Ananthakumar,
Block AA, No.2, TNHB Quarters,
Thadandar Nagar, Saidapet,
Chennai - 15. ... Appellant/ Claimant

vs.

1.V.Kamaraja
2.Liberty Videocon General Insurance
Company Limited,
Anmol Palani, Level-4, No.88,
G.N.Chetty Road, Unit No.E5 and F5,
T.Nagar, Chennai - 600 017 ... Respondents/ Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.04.2019 in M.C.O.P.No.2950/2015 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.V.Revathy
For Mr.Nalliyappan R.

For Respondents : R1 - No appearance
R2 - M/s.C.Harini
For M/s.M.B.Gopalan Associates

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 08.04.2019 in M.C.O.P.No.2950 of 2015 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2. The claimant is the appellant, seeks enhancement of compensation on the ground that the Tribunal has not granted any compensation towards loss of amenities and the compensation granted under other heads are also inadequate. The accident occurred on 11.03.2015 at about 15.30 hours near Dominic School, North Butt Road. Mount Traffic Investigation, Alandur, Chennai-600 016, registered a case in Crime No.154/M2/2015. The Claimant is the Minor, aged about 13 years and the Claim Petition is filed by the father of the Minor.A.Pranavu. The Minor boy was a Pedestrian and due to the accident, he sustained fracture over right foot, Crush injury over right foot, Contusion over chest and multiple injuries all over the body.

3. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced. The Tribunal considered the evidences of P.W.1 as well as Ex.P6/F.I.R Copy. In the FIR, the Driver of the Car bearing Registration No.TN-10-AM-1234 is shown as an accused and as per the deposition of P.W.1, the accident had occurred not because of the negligence of the rider of the 1st respondent. Thus, the Tribunal arrived a conclusion that the accident due to the rash and negligent driving of the offending car bearing Registration No.TN-10-AM-1234 by the driver of the 1st respondent/Mr.V.Kamaraja.

4. Accordingly, the Tribunal held that the respondents are jointly and severely liable to pay compensation to the appellant/claimant. Regarding the quantum of compensation, the learned counsel for the appellant contended that the compensation awarded under the heads of Pain and Suffering as well as the Future Medical Expenses, no compensation is granted for loss of amenities. Therefore, the compensation under all the heads require to be enhanced.

5. The learned counsel for the 2nd respondent/Insurance company disputed the contentions by stating that the appellant/claimant is a Minor boy, aged about 13 years and therefore, the Tribunal has rightly considered the quantum of compensation and there cannot be any definite loss of income as far as the minor children are concerned. Undoubtedly, the appellant/claimant sustained injuries and the medical expenses were granted and beyond that, a sum of Rs.50,000/- was granted towards Pain and Suffering. For Attendar Charges, Rs.25,000/- is granted and towards transportation, a sum of Rs.10,000/- is granted. Further, for Future Medical Expenses, Rs.27,000/- was granted and for Extra Nourishment, Rs.20,000/- is granted. Thus, the compensation awarded by the Tribunal is just compensation

and no enhancement can be granted and therefore, the appeal is to be dismissed.

6. This Court is of the considered opinion that the factum regarding the accident was established. The claimant is the Minor boy, aged about 13 years and as far as the income of the minor boy is concerned, the same is incapable of precise fixation.

7. In the absence of any such disability of precise fixation, the compensation so determined have to be just and proper by a judicious approach and not fixed arbitrarily. The entire facts and circumstances of the case are to be considered for the purpose of assessing the just compensation. For instance, the family status, income of the parents, the living standards of the child are to be considered to arrive a just compensation in such cases, where the Minor children are the claimants.

8. In the present case, the appellant/claimant has not established any such other special circumstances, warranting enhancement of compensation. The Tribunal has considered the facts and circumstances as well as the evidences and accordingly, awarded a sum of Rs.3,05,000/- (Rupees Three Lakh and Five Thousand only) as total compensation. However, the compensation is not granted for Loss of Amenities. Therefore, this Court is inclined to grant a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards Loss of Amenities, which is to be added along with the total compensation granted by the Tribunal. Beyond that, the appellant/claimant has not established any other special circumstances or ground, enabling this Court to enhance the compensation.

9. This being the factum, this Court is inclined to grant a sum of Rs.20,000/- (Rupees Twenty Thousand only) in an addition towards the Loss of Amenities along with the total compensation of Rs.3,05,000/- (Rupees Three Lakh and Five Thousand only) granted by the Motor Accident Claims Tribunal. Thus, the appellant/claimant is entitled for a total compensation of Rs.3,25,000/- (Rupees Three Lakh and Twenty Five Thousand only) along with the interest at the rate of 7.5% per annum. The 2nd respondent/Insurance company is directed to deposit the entire award amount of Rs.3,25,000/- (Rupees Three Lakh and Twenty Five Thousand only) along with the interest at the rate of 7.5% per

annum, within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and on such deposit, the entire award amount is directed to be deposited in any one of the Nationalized Bank in an interest bearing deposit scheme and the deposit is to be renewed periodically till the appellant/Minor attains the age of majority. The father of the appellant/claimant is permitted to withdraw the interest, deriving from the fixed deposit once in three months for the purpose of meeting out the expenses of the Minor child. The payments are to be made through RTGS.

10. Thus, the judgment and decree dated 08.04.2019 passed in M.C.O.P.No.2950/2015 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.3015 of 2019 is allowed in part. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kak

To

1.The II Judge,
Court of Small Causes
Motor Accident Claims Tribunal,
Chennai.

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

SV (CO)
kk 4/1

CMA No.3015 of 2019

WEB COPY