

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1075 of 2017

Minor.Kalpana .. Appellant/Petitioner
(Represented by her Guardian,
next friend, Father Elumalai)

Vs.

1.Velliangiri

2.Saravanakumar

3.National Insurance Company Limited,
No.94/34, Dr.Nanjappa Road,
Coimbatore. .. Respondents/Respondents

(Respondents 1 & 2 remained exparte before
Tribunal. Hence notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.02.2013 made in M.C.O.P.No.1658 of 2005 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.Ma.P.Thangavel
For R3 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 06.02.2013 made in M.C.O.P.No.1658 of 2005 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Coimbatore.

2.The appellant is the claimant in M.C.O.P.No.1658 of 2005 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Coimbatore. The father of the minor appellant filed the above said claim petition, claiming a sum of

Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.09.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the mini bus belonging to the second respondent and directed the third respondent-Insurance Company, being the insurer of the mini bus to pay a sum of Rs.2,17,900/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was aged 2 years at the time of accident and her left leg below knee was amputated. P.W.2/Doctor assessed disability of the appellant as 40%, which itself is very low. The Tribunal ought to have adopted multiplier method for granting compensation towards disability by fixing a sum of Rs.10,000/- per month as notional income of the appellant. The Tribunal ought to have awarded a sum of Rs.5,00,000/- each for future medical expenses, pain and sufferings, mental shock and loss of marriage life. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. The Tribunal ought to have awarded a sum of Rs.1,00,000/- and Rs.2,00,000/- for attendant charges and loss of amenities respectively. The Tribunal ought to have awarded a sum of Rs.50,000/- towards transportation instead of Rs.5,000/-. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:

(i) The judgment of the Hon'ble Apex Court reported in (2014) 14 SCC 396, [Mallikarjun Vs. Divisional Manager, National Insurance Company and another], wherein the Hon'ble Apex Court at paragraph Nos.7, 8, 12 and 13, held as follows:

"...7.It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note

of. As held by this Court in R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and Others[1], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come.

8.While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.

13. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows: -

HEAD	COMPENSATION AMOUNT
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	Rs.25,000/-

HEAD	COMPENSATION AMOUNT
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	Rs.25,000/-
TOTAL	Rs.3,75,000/-

(ii)The judgment of the Hon'ble Apex Court reported in (2015) 1 SCC 539, [Kumari Kiran Vs. Sajjan Singh and others], wherein the Hon'ble Apex Court at paragraph Nos.12 to 14 and 20 to 22, held as follows:

"...12.With respect to compensation towards future loss of income due to permanent disability for appellant-minors, we refer to the case of Master Mallikarjun v. Divisional Manager, the National Insurance Company Limited & Anr.[4], wherein this Court held as under:-

'7. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors. [(1995) 1 SCC 551], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports,

etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come.

8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the

claim for the actual expenditure for treatment, attendant, transportation, etc.'

13. The Tribunal has calculated the future loss of income by taking the notional income of each the appellant-minor as Rs.15,000/- per annum. We are of the considered view that a child's notional income cannot be ascertained as per the figure given for a non-earning individuals in the second schedule of the Motor Vehicles Act, 1988. As the Tribunal and the High Court have not followed the principles laid down by this Court in the above case by awarding loss of future income due to permanent disability, therefore, we set aside the same. Further, reiterating the same principles as held in Master Mallikarjun's case (supra), we award Rs.1,00,000/- each towards shock, pain and suffering (non-pecuniary head) in place of loss of future income due to permanent disability. Further, in Master Mallikarjun case (supra) with respect to compensation for permanent disability this Court held thus:-

'12. Though, it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6

lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick...'

14.Hence, this Court in accordance with the principles laid down by this Court in the above case (supra), and after examining the facts, evidence on record and circumstances of the case on hand, we deem it fit and proper to award Rs.3,00,000/- towards permanent disability of the appellant-minors viz. Kumari Kiran and Master Sachin, since they have suffered 30% and 20% permanent disability respectively, due to the shortening of their right leg by one inch after the injuries sustained in the motor accident. Further, upon considering the age of appellant-minors, they have a long journey ahead of them in their lives, during which they along with their parents will have to endure an immeasurable amount of agony and uncertain medical expenses due to this motor-vehicle accident. Thus, based on the principles laid down in the above case, we award Rs.25,000/- each towards agony to parents and Rs.25,000/- each towards future medical expenses.

20.We are of the opinion, that the appellants without doubt need sufficient nutrition in order to ensure their good health, especially considering the appellant-minors who are just over 10 and 15 years of age. As the Tribunal and the High Court have erred in awarding a meagre amount of Rs.3,000/- to each one of the appellants towards special food and nutrition, instead we award Rs.10,000/- each towards the same.

21. In our considered view of the facts of the case, it is clear that medical attendants were taken for the appellants'

care for 3 months during their treatment and rest period. The Tribunal and the High Court have erred in not awarding compensation towards the same. Therefore, we award Rs.9,000/- each towards attendant's charges (Rs.3,000/- per month for each attendant) and Rs. 5,000/- each towards transportation charges. The compensation awarded to the appellants towards medical expenses by the Tribunal and enhancement of the same by the High Court to the appellant- father is maintained. Further, we are of the view that the Tribunal and the High Court have erred in granting interest rate at only 6% p.a. and 7.5% p.a. respectively on the total compensation amount instead of 9% p.a. by applying the decision of this Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy* [8]. Accordingly, we award the interest @9% p.a. on the compensation determined in these appeals.

22. In the result, the appellants shall be entitled to compensation under the different heads as per the following table:

Sl. No.	Particulars	Kumari Kiran	Master Sachin	Harinarayan
1.	Loss of future income due to disability	-	-	Rs.2,70,000
2.	Pain and suffering	Rs.1,00,000	Rs.1,00,000	Rs.50,000
3.	Agony to parents	Rs.25,000	Rs.25,000	-
4.	Medical expenses	Rs.69,844	Rs.84,876	Rs.1,86,154
5.	Attendant	Rs.9,000	Rs.9,000	Rs.9,000
6.	Transportation	Rs.5,000	Rs.5,000	Rs.5,000

Sl. No.	Particulars	Kumari Kiran	Master Sachin	Harinarayan
7.	Special diet and nutrition	Rs.10,000	Rs.10,000	Rs.10,000
8.	Permanent disability/loss of amenities	Rs.3,00,000	Rs.3,00,000	Rs.50,000
9.	Future medical expenses	Rs.25,000	Rs.25,000	-
	Total	Rs.5,43,844	Rs.5,58,876	Rs.5,80,154

Thus, the total compensation payable to all the appellants by the respondent Insurance Company will be as per the total amount indicated in the preceding table with interest @ 9% from the date of filing of the application till the date of payment."

7.Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the third respondent contended that P.W.2/Doctor assessed percentage of disability of the appellant as 40% and the Tribunal accepted the disability assessed by P.W.2/Doctor and granted compensation by adopting percentage method, which is not meagre. The total compensation awarded by the Tribunal is just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the third respondent and perused the entire materials on record.

9.From the materials available on record it is seen that the appellant has filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.09.2004. The appellant was aged 2 years at the time of accident. Therefore, as per the judgments of the Hon'ble Apex Court reported in 2013 (2) TN MAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd. & another], and (2015) 1 SCC 539, [Kumari Kiran Vs. Sajjan Singh and others] referred to above, the minor appellant is entitled to a sum of Rs.4,00,000/- as compensation towards 40% disability. The appellant has taken treatment in the

hospital as in-patient for 47 days from 30.09.2004 to 16.11.2004 and the Tribunal has not awarded any amount towards attendant charges. The appellant is entitled to a sum of Rs.15,000/- towards attendant charges. The Hon'ble Apex Court in the judgment reported in 2013 (2) TN MAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd. & another], referred to above, granted compensation for disability including pain and sufferings and loss of amenities. In view of the same, amounts granted by the Tribunal separately for pain and sufferings and loss of amenities are set aside. The amounts awarded by the Tribunal towards medical expenses, extra nourishment and transportation are just and reasonable and hence, the same are 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.	Permanent disability, pain and sufferings and loss of amenities	80,000/-	4,00,000/-	Enhanced
2.	Pain and sufferings	10,000/-	-	Set aside
3.	Loss of amenities	50,000/-	-	Set aside
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Medical expenses	62,850/-	62,850/-	Confirmed
7.	Attendant charges	-	15,000/-	Granted
	Total	Rs.2,17,850/- rounded off to Rs.2,17,900	Rs.4,92,850/- rounded off to Rs.4,92,900/-	enhanced by Rs.2,75,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,17,900/- is hereby enhanced to Rs.4,92,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The third 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.1658 of 2005 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Coimbatore. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor appellant attains majority. On such deposit made by the Tribunal, the father of the minor appellant viz., Elumalai is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant, by filing necessary applications before the Tribunal. The appellant is directed to pay the Court fee, if any for the enhanced award amount now determined by this Court. It is made clear that the appellant is not entitled to any interest for the delay period in filing the appeal on Rs.2,75,000/-, the amount now enhanced by this Court as per the order of this Court dated 27.02.2017 made in M.P.No.2 of 2015 in C.M.A.SR.No.32311 of 2015. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

krk
To

1.The IV Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Coimbatore.

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

+1 cc to Mrs.R.Sree vidya Advocate sr4422
+1 cc to Mr.Ma.P.Thangavel Advocate sr3790

C.M.A.No.1075 of 2017

pvs (co)
aa26/08/2020

12/12