

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1863 of 2017
and
C.M.P.No.10089 of 2017

The Branch Manager,
The New India Assurance Company Limited,
No.39-C, Bye pass Road,
Dharmapuri Post 636 701 ... Appellant/2nd respondent

Vs.

1.Minor Kathiravan aged 3 years
S/o.Parasuraman
Rep by mother Mrs.Palani ammal
Nagappan Kotai, Chinnamattarapalli Post
Krishnagiri Taluk
Krishnagiri 635 120. ...1st Respondent/Claimant

2.R.Shankar ...2nd Respondent/1st Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 14.06.2013 made in M.C.O.P.No.670 of 2013 on the file of the Special Sub-Judge (MACT), Krishnagiri.

For Appellant : Mr.R.Neethe perumal

For Respondents-1 : Mr.Mukund R.Pandiyan

For Respondent-2 : Died

J U D G M E N T

The New India Assurance Company is the appellant.

2. The appellant/New India Assurance Company filed the present miscellaneous appeal, challenging the judgment and decree dated 14.06.2013 passed by the Special Sub Judge, MACT, Krishnagiri in MCOP No.670 of 2013.

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3. The injured claimant was three years old at the time of accident. The accident occurred on 10.04.2008 at 18.00 hours(6.00 P.M) near Nagappan Kottai at Chinnamattarapalli to Punguruthi Road, 8.K.M.North of Police Station. Kandhikuppam Police Station, Krishnagiri District registered a case in Crime No.139/2008 under Sections 279 and 338 of I.P.C.

4. The claim petition was filed, seeking compensation of a sum of Rs.7,00,000/-. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the parties concerned. The factum regarding accident was established. The Tribunal arrived a conclusion that the accident was occurred due to the rash and negligent driving of the respondent Vehicle. Thus, the quantum was assessed. The Tribunal fixed the income of the child as Rs.4,500/- per month and accordingly, applied Multiplier method and further, the compensation was granted under various heads. The total compensation of a sum of Rs.4,88,739/- was awarded by the Tribunal.

5. The learned counsel appearing on behalf of the appellant mainly contended that the nature of injury is a crush injury in the left foot and there is no permanent disability. The partial permanent disability assessed by the Doctor was about 40% and the Tribunal has fixed 35% for partial permanent disability. In a case of crush injury, more specifically, when the claimant was aged about 3 years, fixation of monthly income is improper and further, application of Multiplier is also unwarranted.

6. The learned counsel appearing on behalf of the respondent/claimant is of an opinion that the crush injury caused some permanent disability and even now, the minor child is unable to walk freely and therefore, the Tribunal has considered all these aspects and granted compensation, which require no interference.

7. This Court is of the considered opinion that accurate assessment of compensation in the cases of children, suffering either partial permanent disability or permanent disability is undoubtedly difficult. With reference to the relevant factor, if the disability is about 10%, then the fixed compensation is to be granted, taking note of the accident of disability as assessed by the Doctor, which is accepted by the Tribunal. In this regard, it would be relevant to consider that the Tribunal has fixed a Notional monthly income of a sum of Rs.4,500/- per month and accordingly, applied the Multiplier method. In various other heads, compensation was granted. The

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total compensation of a sum of Rs.4,88,739/- was granted by the Tribunal.

8. Though the learned counsel for the appellant, citing the manner, in which the quantum of compensation arrived and contended that such method of working out the compensation is improper on the side of the Tribunal, this Court is of the considered opinion that the overall quantum of compensation granted by the Tribunal cannot be held as excessive.

9. One aspect of the matter is that the nature of injury, age and other factors and the other heads of quantum of compensation awarded, whether just or proper, though certain objections were raised by the appellant by stating that excess compensation was granted under various heads. Taking note of the fact that the total compensation of a sum of Rs.4,88,739/-, this Court is of the opinion that the said compensation is to be construed as a just compensation and this Court do not find any excessiveness regarding the total compensation.

10. Admittedly, the claimant/respondent was aged about 3 years at the time of accident and the crush injury, undoubtedly, caused a disability and the said disability will continue for long. The normal walking style of the claimant is affected. Thus, the claimant lost future prospects also.

11. Taking note of all these factors, this Court is of the considered opinion that the compensation awarded by the Tribunal is just and this Court is not inclined to interfere with the said compensation awarded by the Tribunal.

12. Accordingly, the judgment and decree dated 14.06.2013 passed in M.C.O.P.No.670 of 2013 is confirmed and the civil miscellaneous appeal in C.M.A.No.1863 of 2017 stands dismissed. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

13. The learned counsel for the appellant made a submission that the awarded amount has already been deposited. Thus, the awarded amount deposited must be kept in any one of the Nationalized Bank in an interest bearing fixed deposit scheme till the claimant/respondent attains the age of majority.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Special Sub-Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

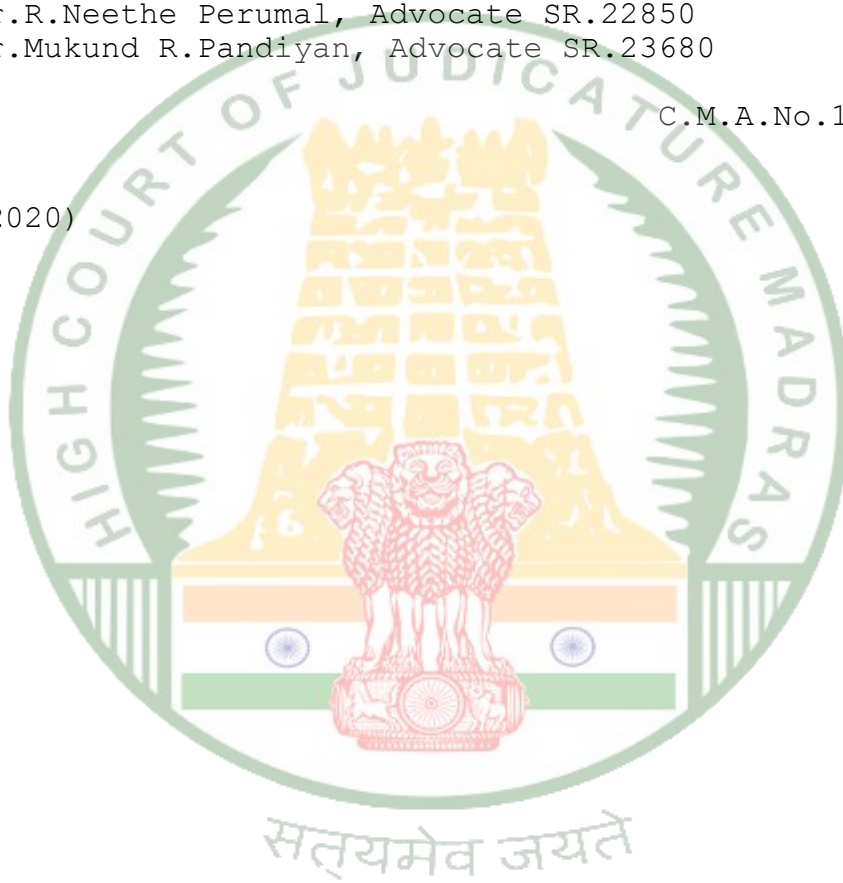
2.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.R.Neethe Perumal, Advocate SR.22850

+lcc to Mr.Mukund R.Pandiyan, Advocate SR.23680

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