

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2580 of 2017

S. Jananee Shree (minor)
rep. By mother and next friend,
S. Nagalakshmi ... Appellant/Petitioner

Vs.

1.M/s. Scope International Private Ltd.,
No.1, Haddows Road,
Nungambakkam, Chennai 600 006.

2.ICICI Lombard General Insurance Co.
Chotabhai Towers,
No. 140, Nungambakkam High Road,
Chennai 600 006.

Now functioning at
ICICI Lombard General Insurance Co. Ltd.,
Harihant Plaza, 1st Floor,
No. 83/84, Walltax Road,
Chennai 600 003. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.02.2017, made in M.C.O.P. No. 2432 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms. P.T. Salim Fathima

For Respondents: Mr. Pranava Charan (for R1)

Mrs. R. Sree Vidhya (For R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 06.02.2017, made in M.C.O.P. No. 2432 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is claimant in M.C.O.P. No. 2432 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. She filed the said claim petition, claiming a sum of Rs.36,00,000/- as compensation for the injuries sustained by her in the accident that took place on 11.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Car belonging to the 1st respondent and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.4,00,000/- 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.

5.Learned counsel appearing for the appellant contended that the appellant was aged 7 months at the time of accident. She sustained multiple fractures in the right leg thigh bone for which plates and screws were fixed. Due to nerve injuries, blood circulation have reduced. The Tribunal erred in awarding only Rs.25,000/- towards transportation, extra nourishment and other miscellaneous expenses as against the claim of Rs.41,000/-. The Tribunal erred in awarding lesser amount than claimed under medical expenses. The sum of Rs.5,000/- awarded by the Tribunal towards pain and suffering and attendant charges are meagre. Due to the fracture sustained in the accident, the appellant is limping. The Tribunal has not awarded any amount for loss of marital prospects and loss of earning power. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant was treated conservatively as out-patient and amounts awarded towards attendant charges is not meagre. The appellant has not filed any document to show that a sum of Rs.59,000/- has been spent for medical expenses. The Tribunal has awarded Rs.20,000/- towards medical expenses. The amounts awarded under different heads are not meagre. The Tribunal applied structural formula, relying on the judgments of the Hon'ble Apex Court and granted compensation towards disability. The appellant is minor non-earning member. The Tribunal considering the same, rightly has not granted any amount for loss of earning. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen that in the absence of any medical bills produced by the appellant, the Tribunal considering the fact that the appellant was injured and has taken treatment, awarded a sum of Rs.20,000/- towards medical expenses. The same is not meagre. The appellant was 7 months old at the time of accident. Her mother also sustained injury in the same accident and has taken treatment as in-patient in the Hospital. Hence she would not have attended the appellant and the appellant would have been attended by some family members. Hence, the amount awarded by the Tribunal towards attendant charges is enhanced from Rs.5,000/- to Rs.15,000/-. Considering the age of the appellant, nature of injuries and the consolidated meagre sum of Rs.25,000/- awarded by the Tribunal towards transportation, extra nourishment and miscellaneous expenditures is enhanced to Rs.41,000/-, as claimed by the appellant. The Tribunal has awarded meagre amount of Rs.25,000/- each towards pain and suffering and loss of amenities and the same are enhanced to Rs.1,00,000/- and Rs.50,000/- respectively. The Tribunal has not awarded any amount towards marital prospects. Due to the fracture, the appellant is limping and her marital prospects would have been reduced. Hence, a sum of Rs.1,00,000/- is awarded towards loss of marital prospects. The amounts awarded by the Tribunal under other heads 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.	Transportation , nourishing food and miscellaneous expenditure	25,000/-	41,000/-	Enhanced
2.	Medical expenses	20,000/-	20,000/-	Confirmed
3.	Attendant charges	5,000/-	15,000/-	Enhanced
4.	Disability	3,00,000/-	3,00,000/-	Confirmed
5.	Pain and suffering	25,000/-	1,00,000/-	Enhanced

6.	Loss of amenities	25,000/-	50,000/-	Enhanced
7.	Loss of marital prospects		1,00,000/-	Granted
	Total	4,00,000/-	6,26,000/-	Enhanced by Rs.2,26,000/-

9. In the result, appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,00,000/- is enhanced to Rs.6,26,000/- together with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 2432 of 2013. On such deposit, the award amount is directed to be deposited in any one of the Nationalized Banks, till the minor appellant attains majority. The mother of the minor appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellant. The appellant is directed to pay the necessary Court fee, if any, on the enhancement amount of Rs.2,26,000/-. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Copy to

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

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

+1cc to M/s.M.Swamikkannu, Advocate Sr.17417
+1cc to M/s.R.Srividhya, Advocate Sr.17687

C.M.A.No. 2580 of 2017

vsn II[co]
srg 03/11/2020