

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2691 of 2017

B.Dhal Bahadur Harijan @ Suresh
(minor) rep by her father and
natural friend T.Bal Bahadur Harijan

..Appellant/Petitioner

Vs.

1. V.S.Logambai

2. New India Assurance Co. Ltd.,
Motor Third party Claims Cell,
No.45, Moore Street, Chennai 600 001.
Now functioning at
New India Assurance Co. Ltd.,
Motor Third party Claims HUB,
Bombay Mutual Buildings, 6th Floor,
No.232, N.S.C.Bose Road, Chennai 600 001.

3. The Director General of Police,
Mylapore, Chennai - 4.

4. The Commissioner of Police,
Greater Chennai, Vepery, Chennai - 8.

5. The Additional Commissioner of Police (Traffic),
Vepery, Chennai -8.

(Respondents 3 to 5 suo motu impleaded vide
order dated 11.03.2020 made

in CMA.No.2691 of 2017) सत्यमेव जयते ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2017 made in M.A.C.T.O.P.No.8230 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.Suryanarayanan
For R1 : Exparte
For R2 : M/s. S.R.Sumathy

J U D G M E N T

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.1,14,210/- towards compensation to the appellant, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 28.11.2013, at about 03.45 hours, when the appellant / claimant was riding the motorcycle bearing Registration No.TN-01-AP-5206, proceeding from north to south direction on the eastern side of the New Avadi Road, near opposite to Life Line Hospital, Kilpauk, a car bearing Registration No.TN-20-AX-8874 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the appellant/claimant sustained grievous injuries. He filed a claim petition before the Tribunal seeking compensation of a sum of Rs.16,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,26,900/-, with interest at the rate of 7.5% per annum from the date of petition. Giving a finding that the accident had occurred due to the rash and negligent driving of the both the drivers of the vehicles, the Tribunal fixed the contributory negligence on the part of both the drivers at the ratio of 10:90 and directed the insurance company to pay 90% of the compensation (Rs.1,14,210/-) to the claimant. Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded, the appellant has preferred this appeal seeking enhancement of compensation.

3.The learned counsel for the appellant/claimant has submitted that without considering the materials and evidence available on record, the Tribunal has fixed 10% contributory negligence on the appellant/ claimant. He further submitted that even though the Doctor, who examined the claimant, fixed the percentage of disability at 30%, the Tribunal has reduced the same to 25%, which is not correct. In all, it is submitted that the compensation awarded by the Tribunal is on the lower side and it needs considerable enhancement.

4.Per contra, the learned counsel for second respondent insurance company has submitted that the Tribunal, based on the materials and evidence available on record, has rightly rendered its findings on negligence and awarded the just compensation and hence, the same do not call for any interference by this Court.

5.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6.P.W.1- father of the claimant deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the car. Even as per Ex.P1-FIR, it is seen that the accident had occurred due to the rash and negligent driving of the driver of the car. The Tribunal, considering the fact that the rider of the motorcycle, a minor, had driven the motorcycle without license, fixed the contributory negligence on the part of the claimant at 10% and fixed 90% negligence on the part of the driver of the car. This Court is of the view that the Tribunal has correctly fixed the percentage of contributory negligence, taking note of the materials, evidence and the facts of the case.

7.Next comes the quantum of compensation. The Tribunal has initially arrived at a total compensation of Rs.1,26,900/- and thereafter, deducting 10% towards contributory negligence on the part of the claimant, the Insurance Company was directed to deposit a sum of Rs.1,14,210/-. P.W.1/father of the claimant deposed in his evidence that at the time of accident, the claimant was aged 15 years and was studying 8th standard. In the accident, he sustained fracture in left leg hip ball joint and neck of thigh bone and multiple injuries all over the body. The Doctor, who treated the claimant, was examined as P.W.2 and according to him, the appellant/claimant has sustained 30% permanent disability. Ex.P5 is the disability certificate and Ex.P6 & Ex.P7 are the X-Rays. But the Tribunal has fixed the disability at 25% and awarded a sum of Rs.75,000/- at the rate of Rs.3,000/- per percentage. Considering the materials and evidence available on record, this Court is of the view that the percentage of disability fixed by the Doctor has to be taken into consideration for calculating the compensation towards disability. If that is done, the amount towards disability works out to Rs.90,000/- and accordingly it is modified. Further, considering the nature of the injuries sustained by the claimant and the period of treatment undergone by him, it would be appropriate to enhance the amount awarded towards pain and suffering from Rs.25,000/- to Rs.40,000/- and also to enhance the amounts awarded towards extra nourishment, transportation expenses and attender charges, to Rs.5,000/-, Rs.5,000/- and Rs.6,000/- respectively. Considering the given facts and circumstances of the case, it would also be appropriate to enhance the amounts awarded towards damage to clothes, future medical expenses and loss of amenities to Rs.1,500/-, Rs.10,000/-, and Rs.10,000/- respectively.

8.That apart, it is the evidence of P.W.1 that the injured claimant at the time of accident, was a 8th standard student and actively involved in the sports; and that due to the accident, he sustained fracture, for which, plates and screws were inserted and hence, he was unable to participate the sports events as before the accident. Taking note of the same, this

Court is inclined to enhance the award of Rs.5,000/- towards loss of education to Rs.50,000/- and is accordingly, enhanced. However, the amount awarded towards Medical expenses at Rs.5,000/- is confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Disability (30%)	90,000/-
Pain and Suffering	40,000/-
Extra nourishment	5,000/-
Transport to Hospital	5,000/-
Damage to clothes	1,500/-
Attender charges	6,000/-
Future Medical Expenses	10,000/-
Loss of Amenities	10,000/-
Medical expenses	5,000/-
Loss of Education	50,000/-

TOTAL....	2,22,500/- =====

Since contributory negligence has been fixed at 10% on the part of the claimant, the modified amount of compensation that would be payable by the Insurance Company, is Rs.2,00,250/- (Rounded off to Rs.2,00,000/-) with interest at the rate of 7.5% per annum from the date of petition.

9. In the result, the appeal is partly allowed. No costs. The second respondent Insurance company is directed to deposit the modified amount of compensation, along with interest and costs, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. During the time of filing the claim petition, ie., in the year 2013, the appellant was 15 years old. Now, he would have attained majority. Hence, on such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal. It is made clear that the appellant/claimant has to pay the appropriate Court fee in order to receive the awarded amount.

s/d-

Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

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To

1. The IV Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1 CC to Mr.M. Swamikannnu, Advocate sr 25471.

C.M.A.No.2691 of 2017

PVS (CO)
SP (26/04/2021)



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