

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2875 of 2017

Dr. Mustac Ali

.. Appellant/Respondent

Vs.

R. Prabhu (minor)

Rep. by his mother and
next friend R. Rukku

.. Respondent/Petition

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.02.2014, made in M.C.O.P. No. 5428 of 2005, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. A.K. Sriram
for M/s. A.S. Kailasam Asso.

For Respondent : Mr. A.A. Venkatesan

J U D G M E N T

This appeal has been filed against the award dated 06.02.2014, made in M.C.O.P. No. 5428 of 2005, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the respondent in M.C.O.P. No. 5428 of 2005, on the file of the II Special Sub Court, (Motor Accident Claims Tribunal), Chennai. The respondent filed the said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 12.05.2004.

3.According to the respondent, on the date of accident viz., 12.05.2004, while he was standing at the left extreme side of the Platform in front of the door No. 03/A at Manali Road, Vyasarpadi, Chennai, a Motorcycle bearing registration No. TN-

21-V-0758, belonging to the appellant came in a rash and negligent manner at terrific speed and dashed against the respondent and caused the accident. The accident occurred only due to rash and negligent ridding by the rider of the Motorcycle belonging to the appellant. Hence, the respondent filed the said claim petition against the owner of the Motorcycle, claiming compensation for the injuries sustained in the accident.

4.The appellant filed counter statement and denied all the averments made in the claim petition. According to the appellant, he sold the Motorcycle bearing Registration No. TN-21-V-0758 on 30.04.1999 itself, while the accident has occurred on 12.05.2004, and hence, he is not the owner of the Motorcycle at present. However, he denied the alleged manner of accident and involvement of the vehicle. The respondent has not examined any eye-witness to prove the alleged accident. The amount claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined his mother/natural guardian as P.W.1 and examined Doctor and Clerk of Government Stanley Hospital as P.W.2 and P.W.3 and marked 9 documents as Exs.P1 to P9. The appellant examined himself as R.W.1, but has not filed any documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the appellant and directed the appellant to pay a sum of Rs.2,00,000/- as compensation to the respondent.

7.Against the said award dated 06.02.2014, made in M.C.O.P. No. 5428 of 2005, the appellant has come out with the present appeal.

8.Though the learned counsel appearing for the appellant has raised various grounds in the appeal, at the time of argument, he restricted his contentions only with regard to quantum of compensation. The learned counsel appearing for the appellant contended that there is discrepancy between Exs.P2 - Discharge summary issued by the Government Stanley Hospital, Chennai and Ex.P4- Puthur Hospital Medical Chit and the Tribunal erred in not considering the same and awarding compensation. P.W.2 - Doctor is a stock witness and the disability assessed by the Doctor and the evidence adduced by him are unsustainable. The Tribunal erred in granting compensation towards disability at the rate of Rs.2,000/- per percentage for 30% disability. The accident is of the year 2004. The Tribunal ought not to have awarded Rs.2,000/- per percentage of disability. Considering the

nature of injuries, the total compensation awarded by the Tribunal under the heads, pain and suffering, attendant charges, extra nourishment, transportation are excessive and prayed for allowing the appeal.

9. Per contra, the learned counsel appearing for the respondent contended that due to the accident, the respondent suffered fracture of both bones on his left leg at the tender age of 8 years. He has taken treatment as in-patient in Government Stanley Hospital from 12.05.2004 to 04.06.2004 and underwent surgery. P.W.2- Doctor assessed the percentage of disability suffered by the respondent as 30%. The Tribunal considering the evidence of P.W.2 - Doctor, Clerk of Government Stanley Hospital as P.W.3 and the disability certificate marked as Ex.P7 and the medical bills placed on record, granted compensation, which are not excessive and prayed for dismissal of the appeal.

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

11. It is the contention of the respondent that due to the accident, the respondent suffered fracture of both bones and underwent surgery. P.W.2 - Doctor has assessed the percentage of disability suffered by the respondent as 30% and issued Disability Certificate, which is marked as Ex.P7. The Tribunal has erroneously awarded a sum of Rs.60,000/- towards disability, by awarding a sum of Rs.2,000/- per percentage for 30% disability. The accident is of the year 2004. Considering the year of accident, the respondent is entitled to compensation towards disability at the rate of Rs.1,500/- per percentage for 30% disability. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.45,000/- ($\text{Rs.1,500/-} \times 30\%$). The amounts awarded by the Tribunal towards pain and suffering, attendant charges, transportation expenses are excessive. The respondent has taken treatment at Government Stanley Hospital as in-patient from 12.05.2004 to 04.06.2004, for a period of 25 days. Considering the year of accident and the period of treatment, the amounts awarded by the Tribunal towards pain and suffering, attendant charges and transportation expenses are reduced to Rs.20,000/-, Rs.5,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries suffered by the respondent, a sum of Rs.20,000/- is awarded towards loss of amenities. In the absence of any material evidence to prove that the respondent suffered functional disability, the amount of Rs.75,000/- granted towards loss of future prospects is liable to be set aside and is hereby set aside. 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.	Disability	60,000/-	45,000/-	reduced
2.	Pain and suffering	30,000/-	20,000/-	Reduced
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Attendant charges	10,000/-	5,000/-	Reduced
5.	Transport to Hospital	10,000/-	5,000/-	Reduced
6.	Medical expenses	5,000/-	5,000/-	Confirmed
7.	Loss of future prospects	75,000/-	-	Set aside
8.	Loss of amenities	-	20,000/-	Granted
	Total	2,00,000/-	1,10,000/-	Reduced by Rs.90,000/-

12. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,00,000/- is modified to Rs.1,10,000/- along with interest and costs. The appellant is directed to deposit the modified award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 2875 of 2017. On such deposit, the Tribunal is directed to deposit the said amount in any one of the Nationalized Banks till the minor attains majority. The mother of the minor respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondent. The appellant is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P. No. 2875 of 2017, if the entire amount has already been deposited. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

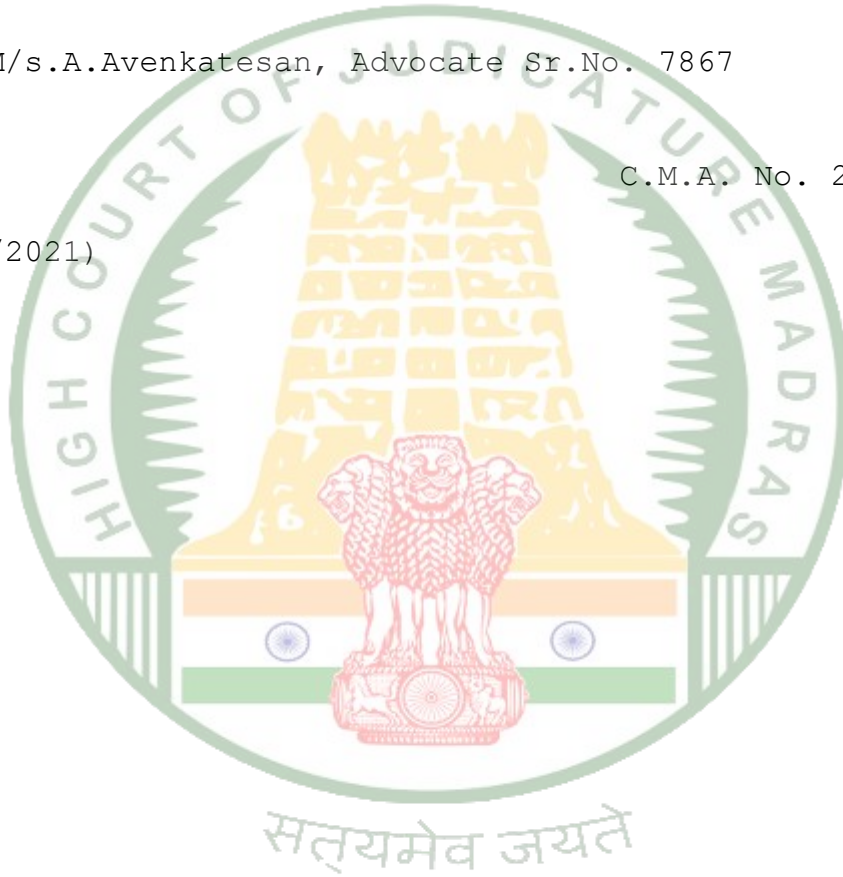
1.The II Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Chennai.

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

+1 cc to M/s.A.Avenkatesan, Advocate Sr.No. 7867

C.M.A. No. 2875 of 2017

RJI (CO)
RMP (11/01/2021)



WEB COPY