IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3101 of 2017
& CMP No.23505 of 2019

Minor Ayman Shareef,
Rep.by father/N.F.Fahimudin, ... Appellant/Petitioner

..vs..

1. Sree Poorani Knitter Private Limited.,
   3/307, Bharathi Nagar,
   Veerapandi Post, Tiruppur 641 605.
2. The Oriental Insurance Co.Ltd.,
   T.P.Hub, Parimalam Complex,
   Mettur Road, Near Bus Stand,
   Erode.
   (1st respondent set exparte)

...Respondents/Respondents

Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2016 made in MCOP.No.1553 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.1, Salem.

For Appellant : Mrs.K.Kuppusamy
For Respondents : Mr. R.Sreevidhya, for R-2
: R1 - Exparte

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal at Rs.15,52,000/-, the claimant/appellant is before this court on the main ground that the same is too low and requires enhancement, since the claimant was aged only seven on the date of accident viz., 07.06.2014.

2.The case of the claimant/appellant is that on the said date at about 04.00 am when the claimant's father was riding his motorcycle bearing Reg.No.TN-30-K-4596 wherein the claimant herein was a pillion rider, the motorcycle was hit by a bus bearing Regn.No.TN-42-B-5167, belonging to the first respondent and insured with the second respondent Insurance Company. Due to the said impact, the minor claimant sustained severe injuries and his left leg was crushed. He was admitted to the hospital and three surgeries had taken place and a part of his left leg was removed. He became disabled permanently. At the time of

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accident, the minor claimant was studying 3rd standard. A criminal case was registered in Crime No.306/14 under Sections 279, 337 and 338 of IPC against the driver of the bus. Claiming that the Insurer of the two wheeler as well as the owner of the bus are liable to compensate the claimant, the appellant / claimant filed a claim petition claiming a sum of Rs.30,00,000/- as total compensation. The Tribunal has passed a detailed judgment referring to case laws and also perusing the materials and evidence on record, ultimately fastening the liability on the second respondent herein and quantifying the total compensation at Rs.15,52,000/- with interest at the rate of 7.5% per annum from the date of petition, under the following break up details:-

HEADS	AMOUNT
1) Loss of Future Earning on account of Disability	Rs. 3,60,000/-
2) Pain and Suffering and trauma	Rs. 2,00,000/-
3) Medical Expenses	Rs. 2,06,200/-
4) Loss of Amenities and Enjoyment of Life	Rs. 1,50,000/-
5) Loss of Prospects of Marriage	Rs. 1,50,000/-
6) Transport Expenses	Rs. 10,000/-
7) Extra Nourishment	Rs. 25,000/-
8) AttenderCharges	Rs. 50,000/-
9) Damaged to Clothes	Rs. 800/-
10) Permanent Disability	Rs. 1,00,000/-
11) Future Medical Expenses	Rs. 3,00,000/-
Total	Rs.15,52,000/-

3. Aggrieved against the said award and stating that more compensation has to be awarded, the claimant / appellant has filed this appeal.

4.The learned counsel for the appellant/claimant submitted that considering the injuries sustained by the appellant, the total compensation awarded is too low; the Tribunal has failed to appreciate Exs.P.15 to P.17, P.32 and P.33 which would establish the fact that the claimant's left leg has been amputated; the amounts awarded towards loss of amenities and enjoyment of life, loss of prospects of marriage and permanent disability at Rs.1,50,000/-, Rs.1,50,000/- and Rs.1,00,000/- respectively, need considerable enhancement; in any event, the award passed by the Tribunal as against the compensation claimed by the claimant at Rs.30,00,000/- is not just and hence it requires enhancement.

5. Per contra, the learned counsel for the second respondent / Insurer has submitted that the Tribunal has taken into consideration all the aspects and has awarded the just

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compensation; in fact, during the year 2014, the then latest judgments were taken into consideration by the Tribunal and ultimately it has awarded the compensation and hence no interference is required. He has also submitted that based on the materials available on record only, the Tribunal has awarded the compensation and hence, the same warrants no interference.

6.A perusal of the evidence available on record would go to show that the claimant/appellant is a young boy and on account of the accident, he lost his left leg partially and he has to live with one leg throughout his life. While quantifying the quantum, the Tribunal has taken note of the judgments of the Hon'ble Supreme Court as well as this Court, in detail, item wise, and has given justification by way of findings.

7.This Court has analysed the amounts awarded by the Tribunal towards all heads and is of the considered view that the amount awarded by the Tribunal at Rs.3,00,000/- towards future medical expenses, needs considerable enhancement. It is seen that the left leg of the claimant was amputated below knee. Since his left leg was amputated and artificial leg has to be fixed to his leg, due to the young age, the growth of the left leg would be fast, which would necessitate for change of artificial leg periodically. That apart, copies of documents, namely, latest surgery details done at Ganga Hospital, medical bills incurred for the same and the expenses incurred towards fixing up of new artificial leg to the appellant / claimant have been filed to show that a considerable amount has been spent towards fixing up of new artificial leg to the appellant. It is also evident from records that a latest surgery was done on the appellant and he was hospitalised for 29 days.

8.A perusal of the materials placed before this Court would go to show that the claimant / appellant is using a below knee prosthesis which requires annual change of socket, prosthesis height, foot size change, etc. keeping his growing age and its recurring cost depends on the future price fluctuation. The Doctor by name Hari Venkatramani has also certified that the claimant/appellant had undergone major re-constructive microsurgery for left below knee stump coverage in a hospital at Coimbatore and he has also certified that the length of the stump of the claimant will be increasing according to the growth of the claimant and there will be difficulty in wearing prosthetics in future and the claimant will require re-constructive surgery to improve his limb functions.

9.Since the growth of the leg of the appellant will be continuing for another seven years, this Court is of the considered view that a sum of Rs.4,00,000/- in addition to Rs.3,00,000/- has to be awarded towards 'Future Medical Expenses' and it is awarded accordingly. The amounts awarded by the Tribunal towards other heads are confirmed.

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10. With the above modification in the quantum, this Civil Miscellaneous Appeal filed by the appellant (claimant) is partly allowed and the total compensation payable by the second respondent is fixed at Rs.19,52,000/- which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to deposit a sum of Rs.17,00,000/- in any one of the Nationalized Banks initially for a period of three years and renewable thereafter till the minor attains majority, and the interest to be accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months directly from the Bank and shall be used for the benefit and welfare of the minor claimant. The balance amount along with interest, shall be transferred to the Savings Bank Account of the appellant / claimant, through RTGS, by the Tribunal within one week thereafter, which shall be used for the medical expenses of the minor claimant. No costs. It is made clear that the appellant/claimant has to pay the appropriate Court fee in order to receive the awarded amount. Consequently the connected CMP is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
   Special Sub Judge No.1, Salem.

2. The Section Officer,
   V.R.Section,
   Madras High Court,
   Chennai-104.

CMA.No.3101 of 2017

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