

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.473 OF 2017

Minor D.Balaji
(Represented by his mother and
next friend D.Manjula) .. Appellant/Petitioner

Vs.

1.B.Balaji
(R1 remained exparte before the Tribunal
and hence, notice to the 1st respondent
is dispensed with)

2.The Oriental Insurance Co.Ltd.
No.8, Esplanade
Chennai-108. ... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2012 made in M.C.O.P.No.5703 of 2003 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Ms.Ramya V.Rao

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 14.03.2012 made in M.C.O.P.No.5703 of 2003 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.5703 of 2003 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. The minor appellant represented by his mother filed the said claim petition claiming a sum of Rs.10,00,000/-

as compensation for the injuries sustained by him in the accident that took place on 12.10.2003.

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 tanker lorry belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said tanker lorry to pay a sum of Rs.2,67,500/- 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 seeking enhancement of compensation.

5.The learned counsel appearing for the appellant/claimant contended that the injured appellant was a minor boy aged six years at the time of accident. He suffered nasal bone fracture, nasal bleeding and other multiple injuries all over the body. The appellant took treatment as in-patient in Government General Hospital on 12.10.2003 and 13.10.2013 for two days. Subsequently, the appellant took continuous treatment as in-patient in Egmore Children Hospital, from 09.03.2006 to 18.03.2006. P.W.2/Doctor has certified that the appellant sustained permanent disablement of loss of hearing on his both ears and assessed the disability of the appellant as 70%. P.W.3/Doctor has certified the disablement on account of nasal bone fracture as 20%. The Tribunal having adopted multiplier method while awarding compensation towards disability, ought to have fixed a sum of Rs.10,000/- as monthly income of the appellant. A sum of Rs.15,000/- fixed by the Tribunal per annum is very meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation. In support of her contention, the learned counsel relied on the following judgment of the Hon'ble Apex Court reported in 2014 (14) SCC 396 (Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. and another):

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1

lakh, unless there are exceptional circumstances to take a different yardstick."

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the disability assessed by the Doctor is on the higher side. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8.From the materials available on record, it is seen that the appellant, who is a minor boy aged 6 years, suffered injuries in the accident that occurred on 12.10.2003. According to the appellant, he suffered multiple injuries on both ears, nasal bone fracture, nasal bleeding and other multiple injuries all over the body. The appellant has taken treatment as in-patient in Government General Hospital on 12.10.2003 and 13.10.2013 for two days. Subsequently, the appellant has taken continuous treatment as in-patient in Egmore Children Hospital from 09.03.2006 to 18.03.2006.

8(i) The appellant has examined two Doctors as P.W.2 and P.W.3 and produced Exs.P9 & P10/disability certificates to prove the nature of injuries and treatment taken by him.

8(ii) P.W.2/Doctor after examining the appellant, has certified that he suffered 70% permanent disability for multiple injuries on his both ears. The Tribunal accepting the evidence of P.W.2/Doctor, fixed the disability of the appellant as 70%, applied multiplier '15', fixed notional income as Rs.15,000/- per annum and awarded a sum of Rs.1,57,200/- towards 70% disability.

8(iii) P.W.3/Dr.K.J.Mathiazhagan after examining the appellant, has assessed the partial permanent disability of the appellant for nasal bone fracture and abrasions on his right hand as 20%. The Tribunal reduced the disability assessed by P.W.3/Doctor from 20% to 10% holding that P.W.3 is not the Doctor who treated the appellant and awarded a sum of Rs.20,000/- (Rs.2,000/- X 10%) towards 10% disability at the rate of Rs.2,000/- per percentage of disability.

8(iv) As per the judgment of the Hon'ble Apex Court reported in 2014 (14) SCC 396 (Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. and another) referred to above, the pecuniary damages for a minor cannot be worked out in the

absence of income of the child and the child cannot be equated to non-earning member for fixing notional income as per the II Schedule. The Hon'ble Apex Court has held that consolidated compensation must be awarded for permanent disability on the basis of percentage of disability.

8(v) In the present case, two Doctors have assessed the disability of the appellant for two parts of the body i.e., 70% and 20% and not for the whole body. Therefore, disability assessed by both the Doctors is reduced and disability of the appellant is fixed at 60%. In view of the above judgment of the Hon'ble Apex Court, the appellant is entitled to a sum of Rs.4,00,000/- as compensation for 60% disability. The compensation awarded by the Tribunal towards the disability assessed by both the Doctors is set aside. The Tribunal has not awarded any compensation towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. Considering the nature of injuries, disability and nature of treatment taken by the appellant, the compensation awarded by the Tribunal towards pain and suffering is confirmed. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence, the same are hereby 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	5,000	5,000	Confirmed
2.	Extra nourishment	5,000	5,000	Confirmed
3.	Medical expenses	10,000	10,000	Confirmed
4.	Pain and suffering	20,000	20,000	Confirmed
5.	Loss of amenities of life, enjoyment in life and expectation of life	25,000	25,000	Confirmed
6.	Loss of education	25,000	25,000	Confirmed

7.	Disability of 10% at the rate of Rs.2,000/- per percentage	20,000	-	Set aside
8.	Permanent disability at 70%	1,57,500	-	Set aside
9.	Permanent disability at 60%	-	4,00,000	Granted
10.	Attendant charges	-	10,000	Granted
	Total	2,67,500	5,00,000	Enhanced by Rs.2,32,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,67,500/- is hereby enhanced to Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, 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 award of the minor appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the minor appellant/claimant viz., D.Manjula, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

C.M.A.No.473 of 2017

PVS (CO)
CS/11/09/2020



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