

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.853 of 2017

Mariyam Fathima (Minor)
(Minor rep. by next friend
Syed Nasim/father of the appellant) .. Appellant /Claimant

Vs.

1.D.Rose
(set exparte in Tribunal)

2.The National Insurance Co. Ltd.,
No.661, Trunk Road,
Poonamallee, Chennai - 56. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.12.2007 made in M.C.O.P.No.39 of 2005 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court - IV, Poonamallee.

For Appellant : Ms.S.Ramya for Mr.J.Mahalingam

For R2 : Ms.N.B.Surekha

For R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.12.2007 made in M.C.O.P.No.39 of 2005 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court - IV, Poonamallee.

2.The appellant is claimant in M.C.O.P.No.39 of 2005 on the file of Motor Accident Claims Tribunal, Additional District

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and Sessions Court, Fast Track Court - IV, Poonamallee. She filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her in the accident that took place on 23.12.1998.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Jeep belonging to the 1st respondent and directed both 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said jeep to jointly and severally pay a sum of Rs.2,15,000/- 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 seeking enhancement of compensation.

5.The learned counsel appearing for the appellant/claimant contended that the appellant has suffered fracture of both bones of right leg, extensive soft tissue loss over the anterior, anterolateral aspect of ankle exposing distal tibia, ankle joint and ankle mortis, extensive complete soft tissue loss all extensor tendons of foot and toes exposing all metatarsals, resulting deformity in right leg and other multiple injuries all over the body. The appellant took treatment as in-patient in Miot Hospital from 23.12.1998 to 18.01.1999 and underwent three surgeries. At the time of accident, the appellant was only 9 years old and she was a student in St.Dominic's Anglo Indian Higher Secondary School. Due to the injuries, she could not able to concentrate on her studies. Therefore, the appellant has suffered functional disability. P.W.3/Doctor has assessed the disability of the appellant as 45%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and loss of expectation of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant was only a student at the time of accident and there was no loss of income. The appellant has not proved that she suffered functional disability. In the absence of any material evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for

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dismissal of the appeal.

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

8. From the materials available on record, it is seen that the appellant has contended that she sustained fracture of both bones of right leg with gross soft tissue loss over the anterior aspect of the leg and dorsum of the foot. P.W.3/Doctor has assessed the disability of the appellant as 45%. The Tribunal has accepted the same and awarded a sum of Rs.60,000/- towards disability. The accident is of the year 1998. The amounts granted by the Tribunal for 45% disability is not meagre. The appellant has not proved that she suffered functional disability and there is loss of earning capacity. Therefore, the percentage method applied by the Tribunal is correct. According to the appellant, due to the injuries, she could not do the work without help of others, she could not able to concentrate on her studies and the Tribunal has not awarded any amount towards loss of studies. Considering the age, year of the accident and nature of injuries sustained by the appellant, this Court awards a sum of Rs.25,000/- towards loss of studies. The appellant took treatment as in-patient in Miot Hospital from 23.12.1998 to 18.01.1999 and subsequently, underwent three surgeries. The Tribunal has not awarded any amount towards attendant charges. The appellant is entitled to a sum of Rs.20,000/- towards attendant charges. Considering the age of the appellant and nature of injuries sustained by her, she would have suffered more pain. Therefore, a sum of Rs.20,000/- and Rs.2,000/- awarded by the Tribunal towards pain & suffering and extra nourishment are meagre and this Court enhanced the same to Rs.35,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. A sum of Rs.15,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under 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 or reduced
1.	Pain and suffering	20,000	35,000	Enhanced
2.	Mental agony	30,000	30,000	Confirmed

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3.	Disability	60,000	60,000	Confirmed
4.	Medical charges	1,02,000	1,02,000	Confirmed
5.	Extra nourishment	2,000	20,000	Enhanced
6.	Transport	1,000	1,000	confirmed
7.	Loss of amenities	-	15,000	Granted
8.	Attendant charges	-	20,000	Granted
9.	Loss of studies	-	25,000	Granted
	Total	Rs.2,15,000/-	Rs.3,08,000/-	Enhanced by Rs.93,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,15,000/- is hereby enhanced to Rs.3,08,000/- along with interest and costs. It is made clear that the appellant shall not be entitled for any interest for the delay period on the amount of Rs.93,000/- enhanced by this Court as per the order of this Court dated 27.02.2017 in M.P.No.1 of 2013 in C.M.A.Sr.No.14430 of 2013. Both the 1st respondent as well as the 2nd respondent/Insurance Company are jointly and severally, directed to deposit the award amount 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, to the credit of M.C.O.P.No.39 of 2005. On such deposit, the award amount is directed to be deposited in any of the Nationalized Bank, till the minor appellant/claimant attains majority. The father of the minor appellant/guardian is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellant. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court No.IV,
The Motor Accident Claims Tribunal,
Poonamallee.

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

+2cc to Mr.J.Mahalingam, Advocate SR.2155
+1cc to M/s.N.B.Surekha, Advocate SR.1209

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