IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO.3234 OF 2010

National Insurance Company Limited,
Branch Office,
165, Netaji Road,
Manjakuppam,
Cuddalore-607 001. .. Appellant/2nd Respondent

Versus

1. Minor Surendar
   represented by his mother
   and natural guardian Mrs.Rukmani.
   .. 1st Respondent/Petitioner

2. Chandramohan .. 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.01.2007 made in M.C.O.P.No.19 of 2005 on the file of the Additional Subordinate Judge(Motor Accidents Claims Tribunal), Cuddalore.

| | | |
|---|---|---|
| For Appellant | : | M/s.R.Rathnathara |
| For R1 | : | Minor Surendar represented by his mother |
| For R2 | : | Ex-parte |

JUDGMENT
(heard through video-conferencing)

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 25.01.2007 made in M.C.O.P.No.19 of 2005 on the file of the Additional Subordinate Judge(Motor Accidents Claims Tribunal), Cuddalore.

2. The brief facts of the case are as follows:
On 03.07.2003 at about 1.45 p.m., when the injured was riding his bicycle, the two wheeler belonging to the second

respondent herein, came in a rash and negligent manner and dashed against the injured. As a result, the injured sustained injuries and he was admitted in the hospital. The Injured was a minor at the time of accident. Hence the claim petition was filed by the mother representing the minor. The claimant filed a claim petition before the Motor Accident Claims Tribunal, Cuddalore, claiming compensation of Rs.5,00,000/- for the injuries sustained.

3.The appellant is the National Insurance Company and in the counter statement has denied all the allegations except those that are specifically admitted. The insurance company denied the alleged injuries sustained by the petitioner, age, income, occupation and quantum of compensation claimed by the petitioner and sought for dismissal of the petition.

4. In order to prove the claim, on the side of the claimant the mother of the injured minor was examined as P.W.1 and the minor injured was examined as P.W.2. The doctor who has given the disability certificate to the minor injured was examined as P.W.3. 10 documents were marked viz., Ex.P1 to P10. No oral or documentary evidence was let in on the side of Insurance Company.

5.The Tribunal upon analysing the evidence and documents placed before it as given a finding that the accident occurred only due to the rash and negligent driving of the driver of the car bearing No.PY-01-U-3853 which belongs to the first respondent. The Tribunal has also awarded Rs.2,93,310/- towards compensation for the injury sustained by the claimant. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

| S.No. | Heads under which the amount is awarded by the Tribunal | Amount in Rs. |
|---|---|---|
| 1. | Loss of earning capacity | 1,50,000/- |
| 2. | Future Medical Expenses | 75,000/- |
| 3. | Pain and Suffering | 25,000/- |
| 4. | Extra Nourishment | 25,000/- |
| 5. | Transportation | 1,000/- |
| 6. | Medical Bill | 17,310/- |
| | Total Compensation | Rs.2,93,310/- |

6. Aggrived by the award passed by the Tribunal the insurance company has preferred this appeal questioning the quantum of compensation. Inspite of given sufficient opportunities there was no representation for the first respondent.

7. Heard the arguments of appellant. The learned counsel for the appellant contended that the Tribunal has grossly erred in awarding exorbitant sum of Rs.2,93,310/- as compensation which is not inconsonance with the facts and circumstances of the case and principles for awards in similar case. The learned counsel for the appellant would submit that the injured was a minor at the time of accident, but the Tribunal has awarded Rs.1,50,000/- for loss of earning capacity, considering the 45% disability fixed by P.W.2 the doctor. The learned counsel further submitted that P.W.2, the doctor has not treated the injured for the injuries suffered by him in the accident on 03.07.2003, but he has examined the injured for the first time on 04.09.2006 only for the purpose of issuing disability certificate. It is also submitted that the Tribunal has grossly erred in ignoring the tender age of the first respondent, there are probabilities that the extent of disability will get reduced over period of time. The learned counsel would further submit that the first respondent was only a minor and there was no piece of evidence to prove his occupation and income as alleged in the claim petition and further the first respondent was not shown to have been incapacitated from doing any work whatsoever in the future for awarding a substantial sum of compensation under the head of loss of earning capacity. The compensation of Rs.1,50,000/- under the head of loss of earning capacity is highly arbitrary and highly excessive. The learned counsel submitted that the Tribunal grossly erred in awarding a huge sum of Rs.75,000/- under the head of future medical expenses and not sustainable in the absence of any reliable evidence on that aspect.

8. It is seen from Ex.P1 the injured himself has given the complaint at the hospital and the same was admitted by him in his cross examination. According to the complaint the respondent/injured was aged about 13 years and at the time of accident he was taking food to his paternal uncle Sundaram who was working in a car workshop nearby. Hence the allegation that the injured was aged 16 years and he was a mechanic and earning Rs.5,000/- per month shall not be taken into consideration.

9. The Tribunal has awarded Rs.1,50,000/- towards the permanent disability based on the disability certificate for 45% given by P.W.2, the doctor. As submitted by the learned counsel for the appellant the said P.W.2 has not treated the injured and he has given the disability certificate based on the discharge summary. In such circumstances the percentage of disability at 45% given by P.W.2 cannot be taken as such.

10. The Tribunal has awarded an exorbitant sum of Rs.75,000/- towards Future Medical Expenses without any basis which needs interference.

11. Considering the nature of injuries and treatment given to the minor injured, this Court is of the view that 35% disability can be taken and Rs.3,000/- per percentage of disability would be reasonable for calculating the compensation for the disability which would come to Rs.1,05,000/-.

12. The compensation of Rs.75,000/- towards future medical expenses is also on the higher side and awarding Rs.15,000/- would be just and reasonable. The amount of Rs.25,000/- each for pain and suffering and extra nourishment awarded by the Tribunal is reasonable and the same is confirmed.

13. The amount of Rs.1,000/- towards transportation charges is very meager and that can be enhanced to Rs.5,000/-

14. Thus, the award passed by the Tribunal, in comparison with the amounts now awarded by this Court is tabulated hereunder:

| Sl. No | Head under which the amount is awarded | Amount awarded by the Tribunal (in Rs.) | Amount awarded by this Court | Confirmed/ enhanced |
|---|---|---|---|---|
| 1. | Loss of earning capacity | 1,50,000/- | 1,05,000/- | reduced |
| 2. | Future Medical Expenses | 75,000/- | 15,000/- | reduced |
| 3. | Pain and Suffering | 25,000/- | 25,000/- | confirmed |
| 4. | Extra Nourishment | 25,000/- | 25,000/- | confirmed |
| 5. | Transportation | 1,000/- | 5,000/- | enhanced |
| 6. | Medical Bill | 17,310/- | 17,310/- | confirmed |
| | Total Compensation | Rs.2,93,310/- | Rs.1,92,310/- | Reduced by Rs.1,01,000/- |

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest at 7.5% p.a., 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.19 of 2005. The said amount shall be in Fixed Deposit in any one of the Nationalised Bank till the first respondent attains majority. On such deposit, the 1st respondent/claimant on attaining the age of majority, is permitted to withdraw the

award amount along with interest and costs. The appellant/ Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.19 of 2005, if the entire amount has already been deposited. No costs.



Sd/-
Deputy Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Additional Subordinate Judge
(Motor Accidents Claims Tribunal),
Cuddalore.

2. The Section Officer
Vernacular Records Section
High Court, Madras.

Copy To

Minor Surendar
Represented by his mother
and natural guardian Mrs.Rukmani.
No.20, Massoodhi Veedhi,
Pudupalayam, Cuddalore-607 001.

CMA.No.3234 of 2010

GP(CO)
CS/17/11/2021