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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 01.03.2021

JUDGMENT DELIVERED ON: 25.03.2021

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3359 OF 2012

S.Vinoth Kumar (minor)
Rep. By his father and next friend,
Sundara Moorthy

... Appellant/Petitioner

Vs.

1. M/s. Southern Cyber Logistica Pvt. Ltd.,
No.17/73, Church Road, Perungudi,
Chennai - 600 096.
2. The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1879 of 2008 dated 28.01.2012 on the file of the Motor Accidents Claims Tribunal/ III Small Causes Court, Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondents : R1- No Such Company.

Mr.J.Michel Viswasam for R2.



JUDGMENT

(This case has been heard through video conference)

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The Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 28.01.2012 in MCOP.No.1879 of 2008 on the file of the Motor Accidents Claims Tribunal/ III Small Causes Court, Chennai.

2. The case in brief is as follows:

On 20.03.2008 at about 19.00 hours, the accident had taken place on Tharamani road, the appellant was walking opposite to CSI Church at Tharamani, at that time, the TATA ACE bearing Registration No. TN-07-AQ-8264, driven by its driver in a rash and negligent manner, knocked down the claimant, as a result of which, he sustained grievous injuries.

3. Mr.R.Kalaiarasan, the learned counsel for the appellant has submitted his arguments. As per his submissions, the Tribunal had not adopted the multiplier method, even though, the claimant had suffered partial permanent disability due to the injuries. As per the claimant's case, the claimant was a 14 year old boy and he was a school student on the date of accident. The claimant suffered injuries on both legs. He underwent surgery and post surgical treatment for a short period of 29 days. The injuries suffered by him had resulted in partial permanent disability. The claimant was unable to attend the school and it has affected his studies. Therefore, the Tribunal ought to have fixed notional income and applied the multiplier method instead, it had followed percentage criteria. Therefore, only a meagre amount was awarded as compensation. Since the award granted is meagre, the claimant has preferred this appeal. He has also furnished the calculation memo to enable this Court, to re-fix the compensation under several heads.

4. Mr.J.Michael Viswasam, learned counsel for the second respondent/ Insurance Company has submitted his arguments. As per his submissions, the Motor Accident Claims Tribunal had granted reasonable amounts under different heads. Since, the claimant was a school student and he was 14 years old, there is no question of monthly income or any other income. The Court



cannot fix any income for a school student. The Tribunal had granted amount under the head "loss of education" which is unwarranted. Even if the legs had been amputated, if the student is willing and self employed, he could have completed his education. Due to this accident, it may have affected his attending school for a short period of two or three months. But the learned counsel for the appellant stated that due to the injuries, he was unable to attend the school. His contention is not acceptable and it has to be rejected. This appeal has no merit and it has to be dismissed.

5. Point for consideration

Whether the appellant/claimant who was a student aged 14 years at the time of the accident is entitled to enhancement of compensation.

6. Perused the claim petition filed by the guardian of the minor boy as appellant/claimant before the Motor Accident Claims Tribunal in MCOP.No.1879/2008, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

7. On perusal of the deposition of P.W.2, Doctor and the order passed by the Tribunal, it is found that the Tribunal had appreciated the evidence properly and had arrived at a conclusion in granting just compensation. The evidence of the Doctor was explicitly relied on by the learned counsel for the appellant. On perusal of the evidence of P.W.2 Doctor, it is found that the Doctor had given opinion only regarding the disability. He had not treated the claimant. Therefore, the evidence of P.W.2, Doctor which has been relied on by the learned counsel for the appellant cannot be accepted and it has to be rejected.

8. As rightly pointed out by the learned counsel for the Insurance Company, the award of Rs.50,000/- for loss of education in this case is unwarranted. The injured was 14 years and he suffered partial permanent disability. But, that cannot be a ground for affecting his education. Therefore, the contention of the learned counsel for the appellant/claimant is rejected. Any how, considering the contention of the learned counsel for the second respondent, Rs.50,000/- towards loss of



education granted by the Tribunal cannot at all be accepted, by any Tribunal and the same is struck off. Therefore, the award passed by the Tribunal under the other heads are confirmed.

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9. The point for consideration is answered in favour of the Insurance Company and against the appellant/claimant herein.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The Insurance Company is directed to deposit the amount, which this Court determined in this appeal(excluding the amount awarded by the Tribunal under the head "loss of education") to the credit of M.C.O.P.No.1879 of 2008 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is entitled to withdraw the award amount with accrued interest and costs as stated above. No costs.

Sd/-

Assistant Registrar(Audit)

// 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.

+2ccs to M/s.N.M.Muthurajan, Advocate, S.R.No.19894

+1cc to M/s.J.Michel Viswasam, Advocate, S.R.No.19320

C.M.A.No.3359 of 2012

RR(CO)

RLP(09/11/2021)