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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1468 of 2013

Minor. K.Manikandan and next friend
(Represented by his father Murugan)

...Appellant/Claimant

Vs.

1.K.Logabiraman
(R1 remained exparte before the Tribunal
and hence, notice to R1 is dispensed with)

2.United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai 600 006.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2011 made in M.C.O.P.No.2699 of 2009 on the file of the VI Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mrs.V.Suguna for
M/s.C and K Law Firm

For Respondents : Mrs.K.Saraswathi for
Mr.C.R.Krishnamoorthy for R2

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 12.12.2011 made in M.C.O.P.No.2699 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellant is claimant in M.C.O.P.No.2699 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. The minor represented by his father filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.08.2009.



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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 auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the auto to pay a sum of Rs.2,12,997/- 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 submitted that the appellant sustained fractures over hip, left femur, right fibula, serious injury over abdomen, rupture in urethra and contusion over both hands. The appellant took treatment as in-patient from 16.08.2009 to 07.09.2009 in Government General Hospital and underwent surgery on 27.08.2009, whereby ORIF with flexible nailing was done. On 08.09.2009, the suture was removed. Even after prolonged treatment, the appellant could not do his day-to-day affairs. Now he is taking continuous treatment as out-patient. The Tribunal has not granted any amounts towards future medical expenses, loss of earning power, loss of amenities and mental agony. P.W.3/Doctor examined the appellant and certified that the appellant has suffered 80% disability. To prove the same, the appellant marked the Disability Certificate and X-ray as Exs.P9 & P8 respectively. The amounts awarded by the Tribunal towards extra nourishment, disability, transportation and pain & sufferings are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials available on record, awarded compensation, which is 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 the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.From the materials on record, it is seen that the claim petition is filed by the minor appellant represented by his father claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained in the accident that took place on 16.08.2009. At the time of accident, the appellant was aged 11 years. The evidence was let in by the father of the minor appellant to show the nature of injuries sustained by the minor appellant. Dr.J.R.R.Thiyagarajan was examined as P.W.3.



P.W.3/Doctor after examining the minor appellant and X-ray with regard to the injuries, certified that the appellant suffered 80% disability. The appellant has not let in any contra evidence to the evidence of P.W.3. P.W.3 in his cross-examination deposed that there is a possibility of 5% variation from one Doctor to another for assessing the disability. The Tribunal reduced the disability to 75% and granted a sum of Rs.1,50,000/- as compensation towards disability by adopting percentage method. The appellant was aged 11 years at the time of accident. The issue of compensation granted for the injuries sustained by the minor, came up for consideration before the Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another] and the relevant paragraph is extracted hereunder:

"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."

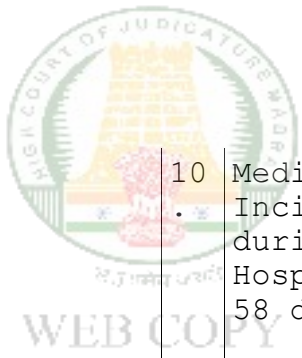
9.The appellant is entitled to compensation, by applying the principle laid down by the Hon'ble Apex Court in the judgment referred to above. The contention of the learned counsel for the appellant that the injuries sustained by the victim in the case reported in 2013 (2) TNMAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another] and the injuries sustained by the appellant in the present case are different and hence, the judgment of the Hon'ble Apex Court referred to above is not applicable to the present case, is not acceptable. In the judgment referred to above, the Hon'ble Apex Court held that it is very difficult to have an accurate assessment of the compensation in the case of minor suffering disability and after holding so, the Hon'ble Apex Court fixed compensation payable to the minor based on the percentage of disability. In view of the same, the appellant is entitled to compensation as per the ratio laid down in the judgment of the Hon'ble Apex Court referred to above. In the present case, the appellant suffered 80% disability and hence, he is entitled to a sum of Rs.5,00,000/- as compensation for disability including pain & suffering and loss of amenities. Further, Rs.25,000/-



each are awarded towards attendant charges, medical expenses and future medical expenses. The compensation awarded by the Tribunal under all other heads are hereby set aside.

10. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Transportation	10,000	-	Set aside
2.	Extra nourishment	7,000	-	Set aside
3.	Damage to clothes	1,000	-	Set aside
4.	Medical expenses	2,997	-	Set aside
5.	Attender charges	2,000	-	Set aside
6.	Pain and suffering	40,000	-	Set aside
7.	Disability	1,50,000	-	Set aside
8.	Pain and suffering already undergone and to be suffered in future, Mental and Physical shock, Hardship, Inconvenience and Discomforts, etc., and Loss of Amenities in Life on account of Permanent Disability	-	5,00,000	Granted
9.	Discomfort, Inconvenience and Loss of Earnings to the parents during the period of Hospitalization	-	25,000	Granted



10	Medical and Incidental Expenses during the period of Hospitalization for 58 days	-	25,000	Granted
11	Future Medical Expenses for correction of the mal union of fracture and incidental expenses for such treatment	-	25,000	Granted
	Total	2,12,997	5,75,000	Enhanced by Rs.3,62,003 /-

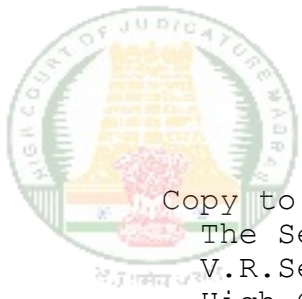
11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,12,997/- is hereby enhanced to Rs.5,75,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced 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 father of the minor appellant viz., Murugan, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vr
To
1. The Motor Accident Claims Tribunal
Small Causes Court No.VI,
Chennai.



Copy to
The Section Officer
V.R.Section
High Court, Chennai

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KV (CO)
SP (04/02/2022)