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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.NO.1392 OF 2020

Minor Poorvika (8),
Rep. by his next friend/Guardian/Mother
Revathi

... Appellant/Petitioner

Vs

1. Sri Rangasamy
2. United India Insurance Co., Ltd.,
5-B/11, State Bank of India Upstairs,
Salem Main Road, Rasipuram,
Namakkal District - 637 408.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP No.1386 of 2017, dated 02.12.2019 on the file of the Motor Accident Claims Tribunal / Additional District Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.A.Dhiraviyanathan for R2

J U D G M E N T

The minor claimant who sustained grievous injuries in an accident that occurred on 25.06.2017 is on appeal, seeking enhancement of the award of Rs.1,85,000/- made by the Motor Accident Claims Tribunal, Namakkal in MCOP.No.1386 of 2017.

2. According to the claimant, the accident occurred while she was standing on the mud portion of the road and the Maruthi car bearing Reg.No.TN-23-L-1264, which was driven by its driver in a rash and negligent manner came and hit against the claimant



causing grievous injuries. The injuries included a fracture in the left ankle and fibula. She was admitted as inpatient in Sri Manickam Hospital at Rasipuram and she was again taken to Universal Hospital at Salem for further treatment.

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3. She was diagnosed as having suffered fracture in the left ankle Bimalleolar fracture with epiphysis injury. The claimant assessed the compensation at Rs.15,00,000/-. The Doctor who had treated her was examined as P.W.2. He has also issued a disability certificate to the effect that the claimant has 30% disability due to the accident. It is seen from the discharge summary that has been produced as Ex.P8 that the appellant was operated upon and ORIF with k-wiring fixed in left fibula and midial tibial epiphysis was done.

4. A reading of the discharge summary coupled with the evidence of the Doctor shows that the injuries are of very serious in nature and certain implants were also made. The Tribunal upon consideration of the evidence on record, awarded the following amounts as compenensation under various heads:-

Heads	Award Amount
30% Permanent disability	Rs.90,000/-
Medical Expenses (supported by bills)	Rs.80,443/-
Transportation	Rs.5,000/-
Pain and Suffering	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Total	Rs.1,85,000/-

5. Terming the compensation as very low, the claimant has come up with this appeal.

6. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.A.Dhiraviyanathan, learned counsel appearing for the 2nd respondent/ Insurance Company. Notice sent to the 1st respondent has been returned with endorsement 'Not found'. It is seen from the records that the 1st respondent remained ex parte before the Tribunal, hence notice to the 1st respondent is dispensed with.

7. Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant would vehemently contend that the trial Court must have followed Master Mallikarjun Vs. Divisional Manager, National Insurance Company Ltd., anr., reported in 2013 (2) TN MAC 338 (SC) case, since it is the case of a minor claimant. He



would also point out that the award made under various heads are very meagre and requires enhancement.

8. Contending contra Mr.A.Dhiraviyanathan, learned counsel appearing for the 2nd respondent/ Insurance Company would contend that the multiplier method for awarding compensation in injury case can be applied only if there is evidence to show that the injury would have a lasting effect on the earning capacity of the claimant. In the absence of such evidence, multiplier method cannot be adopted. He would also point out that the Tribunal has rightly applied the percentage method and granted Rs.90,000/- for permanent disability at Rs.3,000/- per percentage of injury. He would add that the compensation awarded under other heads are also reasonable and does not require any enhancement.

9. I have considered the submissions on either side. From the discharge summary marked as Ex.P8 and the evidence of Doctor who was examined as P.W.2, it is seen that the claimant has undergone surgery for the injuries sustained by her and certain implants were also been made. Therefore, the award needs to be revised.

10. As far as the permanent disability is concerned, the disability certificate issued by the Doctor, who treated her, shows that she has suffered 30% disability. Considering the age of the minor and the fact that there has been disfigurement of the left leg and taking into account the minor is a female child, I am of the opinion that an award of Rs.5,000/- per percentage would be just and reasonable. Award for permanent disability is enhanced to Rs.1,50,000/- from Rs.90,000/-.

11. The Tribunal has awarded Rs.5,000/- for pain and sufferings. It is seen from the records that the claimant was admitted as inpatient for atleast 9 days and surgeries have been performed. There are also certain implants which would cause further pain and suffering. I am therefore of the opinion the award under the head pain and suffering should be enhanced to Rs.45,000/- from Rs.5,000/-.

12. The Tribunal has not awarded any amount for future medical expenses. As already pointed out that there are implants and those implants will have to be removed, which would definitely involve certain costs. Considering the fact that the medical expenses are increasing day by day, I am of the opinion that Rs.25,000/- can be awarded for future medical expenses.

13. Due to the accident, there is disfigurement of the left leg of the appellant. Being a girl child, this may have a



bearing on her marital prospects, hence, certain amount must be awarded towards loss of amenities, which I fix at Rs.25,000/-.

14. Thus, the award of the Tribunal is modified as follows:-

Heads	Compensation awarded by the Tribunal	Compensation Enhanced/ awarded by this Court
30% Permanent disability	Rs.90,000/-	Rs.1,50,000/-
Medical Expenses (supported by bills)	Rs.80,443/-	Rs.80,443/-
Transportation	Rs.5,000/-	Rs.5,000/-
Pain and Suffering	Rs.5,000/-	Rs.45,000/-
Extra nourishment	Rs.5,000/-	Rs.5,000/-
Future medical expenses	--	Rs.25,000/-
Loss of Amenities	--	Rs.25,000/-
Total	Rs.1,85,000/-	Rs.3,35,443/-

The total compensation comes to Rs.3,35,443/-, is rounded off to Rs.3,35,000/-. The Insurance Company is directed to deposit the amount with appropriate interest within a period of 8 weeks from the date of receipt of a copy of the judgment.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dsa

To

The Motor Accident Claims Tribunal
Additional District Judge, Namakkal.

Copy To

The Section Officer,
V.R. Section, High Court, Madras - 104.

C.M.A.NO.1392 OF 2020

JP-II(CO)

RLP(11/04/2022)