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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

C.M.A.No.969 of 2014

E.Vasudevan (Minor)
S/o.Elumalai

..Appellant / Petitioner

Versus

1.R.Kamaraj
[was set exparte in the trial Court]

2.ICICI Lombard Gl.Insurance Co.Ltd.,
Arihant Plaza, No.84/85, Walltax Road,
Chennai - 600 003

..Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 20.09.2013 made in MACT.O.P.No.2091 of 2011 on the file of the Special Sub Judge-I, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.P.T.Salim Fathima

For Respondents : Ms.R.Sreevidhya [for R2]
R1 - Notice served

J U D G M E N T

The Appellant/claimant has filed this appeal against the judgment and decree dated 20.09.2013 made in MACT.O.P.No.2091 of 2011 on the file of the Special Sub Judge-I, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.



2. The learned counsel appearing for the appellant submits that the first respondent was set ex-parte.

3. The case of the appellant/claimant is as follows:

On 01.06.2011 at about 15.00 hours, the minor petitioner was riding the cycle from North to South direction in Tirvullur Salai and while he was about to join K.B.Dasan Salai, a Motor Cycle bearing Registration No.TN-07-R-8317 came from West to East direction in K.B.Dasan Salai in a very high speed, rash and negligent manner endangering to the public safety, came to the extreme Northern side of the road and dashed against the petitioner, due to which he sustained multiple compound and commuted fracture and degloving injury in both bones in right leg below knee. Severe injury in the skull and chest. Multiple internal and external injuries all over the body. Immediately, the appellant/claimant was admitted at C.M.O., Government Royappettah Hospital, Chennai, and for further treatment at St.Isabella Hospital, Mylapore, Chennai. Since the appellant/claimant is a 14 year old boy, the appellant/claimant filed a claim petition seeking compensation in a sum of Rs.9,00,000/- for the injuries sustained by him in the accident.

4. Resisting the claim made by the appellant/claimant, the 2nd respondent Insurance company has filed a detailed counter statement inter alia stating that the accident did not occur in the manner as projected by the first respondent/claimant. Thus, they prayed for dismissal of the claim petition.

5. Before the Tribunal, to prove his case, the father of the injured was examined as P.W.1 and one Mr.Dr.Amarnath R.Sowlee was examined as P.W.2 and 7 documents were marked as Ex.P.1 to Ex.P7. On the side of the 2nd respondent/Insurance Company, none were examined and no exhibits were marked.

6. On appreciation of materials, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the Motorcycle bearing Registration No.TN-07-R-8317 and held that the 2nd respondent/ Insurance Company, as insurer of the said vehicle, is liable to pay compensation. Accordingly, the Tribunal awarded a sum of Rs.1,13,000/- as compensation. The break-up details are as follows:



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent disability 25% x Rs.2,000/-	50,000/-
2.	Transportation	5,000/-
3.	Extra Nourishment	5,000/-
4.	Medical Treatment	38,000/-
5.	Pain and Sufferings	15,000/-
	Total	1,13,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realization. Unsatisfied with the said award, the appellant/claimant preferred the appeal before the said Court.

7. According to the appellant, oral and documentary evidence was adduced before the Tribunal to prove that the appellant/claimant has sustained 30% of the disability in the accident.

8. Heard the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent/Insurance Company.

9. Learned counsel for the appellant/claimant contended that P.W.2 - Doctor was examined on the side of the appellant/claimant and he deposed that the appellant/claimant has sustained 30% the disability in the said accident. The Tribunal assessed 25% disability without any reason. Therefore, the said finding of the Tribunal is liable to be set aside. Learned counsel further submits that the amount awarded under the other heads is on the lower side.

10. Learned counsel for the respondent would submit that the award of the Tribunal is fair and just and does not require any interference by this Court. Learned counsel for the 2nd respondent/Insurance Company has objected for awarding enhancement of compensation.

11. On perusal of evidence of P.W.2, Doctor, who was examined on the side of the appellant, it is seen that he has assessed 30% disability. The Tribunal has assessed 25% without



any reason and therefore, this Court is of the opinion that the appellant/claimant has suffered 30% partial disability in the said accident. Considering the fact that P.W.2 was examined and deposed that the appellant/claimant suffered 30% disability and taking note of the principles laid down by the Supreme Court of India, this Court is of the view that the compensation awarded under the head 'disability' requires enhancement.

12. This Court is of the view that the Tribunal has awarded Rs.2,000/- per percentage of disability. Considering the age of the appellant/claimant i.e., 14 at the time of the accident, it is appropriate to fix Rs.3,000/- per percentage of disability. Therefore, compensation payable under the head 'disability' would be,

$$30\% \times \text{Rs.}3000 = \text{Rs.}90,000/-.$$

The amount awarded under the other heads is hereby confirmed.

13. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	30% of Disability	90,000.00
2.	Transport	5,000.00
3.	Extra Nourishment	5,000.00
4.	Pain and Sufferings	20,000.00
5.	Attender Charges	5,000.00
6.	Loss of Amenities	5,000.00
7.	Medical Expenses	38,000.00
	Total	1,68,000.00

14. In the result, this Civil Miscellaneous Appeal is partly allowed, the total compensation of Rs.1,13,00/- awarded by the Tribunal is enhanced to Rs.1,68,000/- along with interest at the rate of 7.5% per annum.

15. The 2nd respondent/Insurance Company shall deposit the modified compensation amount, as awarded by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already



deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The modified award amount of the appellant/claimant shall be deposited in a nationalized bank till the minor attains the majority and the father of the minor petitioner is permitted to withdraw the interest once in three months directly from the bank. The appellant/claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bri

To

The Special Sub Judge-I,
The Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

Copy To:

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

+1cc to M/s.M.Swamikkannu, Advocate, S.R.No.10948

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.11643

C.M.A.No.969 of 2014

KK(CO)
SB(28/09/2021)