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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.741 of 2017

Rajamani

...Appellant/ Petitioner

Vs

1.Mathiazhagan

2.Oriental Insurance Company Limited,
"Oriental House", 2nd Floor,
No.115, Broadway Road,
Chennai - 600 108.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 12.04.2013 made in M.A.C.T.O.P.No.2841 of 2010 by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondents : Exparte R1
Mr.J.Chandran for R2

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

2. It is a case of motor accident, in which the claimant Rajamani sustained head injury, fracture of right tibia and fracture of right colles. On 2.11.2006, when he was standing in Sethamangalam bus stop, the Omni van bearing registration No.TN 37 AE 6080 dashed against him. The claimant was treated as in-patient in the Government hospital for 12 days and thereafter continued his treatment as out patient. The doctor, who assessed the injury, has certified the injury has caused 65% partial permanent disability. The claim petition for Rs.6,00,000/- was filed against the owner of the Omni van and its insurer.



3. The claim petition was contested by the 2nd respondent on the ground that the accident occurred, when the claimant suddenly crossed the road and fell on the vehicle. It was the driver of the Omni van who took him to the hospital and arranged for his treatment. Injury alleged to have been sustained by the claimant is not correct and it is exaggerated for the purpose of getting more compensation. He was not in the hospital for 12 days as alleged.

4. Before the Tribunal, one Perumal, father of the injured minor petitioner, and Dr.Thiagarajan, who gave the disability certificate, were examined. Five exhibits were marked in support of the claim petition. The Tribunal after considering the evidence has awarded a sum of Rs.1,61,000/- as compensation with interest at the rate of 7.5% from the date of petition till the date of deposit.

5. The learned counsel for the appellant, in support of the appeal seeking enhancement, would submit that at the time of accident the victim was 16 years old pursuing his higher secondary school, the injury sustained by him has caused memory loss and difficulty in physical movement. The doctor has assessed 65% disability, for which, the Tribunal has awarded a sum of Rs.1,10,000/- taking into account the injury has caused 55% disability and for each percentage Rs.2,000/- has been awarded.

6. Referring the Hon'ble Supreme Court rendered in Master Mallikarjun Vs. Divisional Manager, National Insurance Co.Ltd. & another reported in 2013 (2)TNMAC 338 (SC), the learned counsel for the appellant submit that in case of childhood difficulties of position should be dogmatic and must be enabling the factor to the child to overcome the inconvenience and discomfort caused due to the accident. The regular structural formula should not be adopted.

7. This Court has no second opinion about the principle laid down by the Hon'ble Supreme Court. However, it is necessary to find that what exactly the inconvenience caused to the accident victim and how best the said inconvenience compensated by money. In the given case, as per Ex.P.3-the discharge summary, the claimant has sustained injury on his left temporo parietal region and fracture injury on the right tibial spine, left knee dislocation and right colles fracture. He had been treated at Government hospital, Villupuram from 02.11.2006 to 13.11.2006. After surgery of the wound on the left parietal region, conservative treatment was given and was discharged. The doctor has opined that the injury has caused 65% disability. The deposition of Dr.Thiagarajan has stated the following reasons for assessing the disability as below:-



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"Due to head injury the minor petitioner is experiencing headache, giddiness, shivering of limb, loss of memory for which assessed 30%, fracture of right tibia is now mal united due to which he finds difficulty in folding right leg for which assessed 15%, due to fracture of right radius he finds difficulty to lift heavy objects for which assessed 20% in total 65%"

8. The learned counsel for the 2nd respondent contended that PW.2 is not the doctor who treated the injured and his assessment of disability is disproportionate to the injury sustained and there is no working sheet provided by him for the said assessment. The comparison of the discharge summary Ex.P3 and the disability certificate given by PW.2 after six years of the accident clearly shows the embellishment in the disability certificate given by the doctor. The nature of the injury sustained by the claimant as found in the discharge summary, there is no permanent disability.

9. However, as stated by the Hon'ble Supreme Court that shock, pain and suffering, frustration and deprive of pleasure and enjoyment, the child to overcome, compensation must be fair and adequate. In view of this Court the compensation of Rs.1,61,000/- inclusive of disability, pain and sufferings, loss of amenity etc., is very less and has to be reasonable enhanced.

10. Taking guidance from the tabular column provided in Master Mallikarjun case, the compensation of Rs.1,61,000/- awarded by the Tribunal is enhanced to a consolidated sum of Rs.3,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The said award amount shall be deposited to the credit of M.A.C.T.O.P.No.2841 of 2010, on the file of the Motor Accident Claims Tribunal II Court of Small causes, Chennai within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the amount on appropriate petition.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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