



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.09.2021

Delivered on : 9.12.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

WEB COPY

C.M.A(MD) No.1194 of 2013

Minor.Balamurugan

Rep. by his father & Natural Guardian

Karuppaiah

... Appellant/Claimant

Vs.

1.Swami Nethiyanantha

2.The Branch Manager,

New India Assurance Co. Ltd.,

Pudukkottai.

...Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the order and decretal order as made in M.A.C.T.O.P. No. 389 of 1999 on the file of the Motor Accidents Claims Tribunal (Principal District Court) at Pudukkottai dated 04.02.2002.

For Appellant

: Mr.V.Ayyadurai

For R1

: Mr.A.Sankarasubramanian

For R2

: Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, made in M.A.C.T.O.P.No. 389 of 1999, on the file of the Motor Accidents Claims Tribunal - Principal District Court, Pudukkottai, dated 04.02.2002.

2.The appellant herein is the claimant and the respondents herein are the respondents in the main claim petition.

3.Brief substance of the petition, in M.A.C.T.O.P.No. 389 of 1999, is as follows:-

On 31.01.1998, at about 8.00 am., when the minor petitioner was travelling with the other students in a mini bus bearing Registration No.TCS - 898, the driver, drove the bus in a rash and negligent manner, suddenly applied the brake and the bus capsized. The petitioner sustained injuries and he took treatment in the Government Hospital, Aranthangi and then, he took treatment at the Government Hospital, Thanjavur, as inpatient from 31.01.1998 till 23.03.1998. The minor petitioner was studying third standard at the time of accident and he claimed a sum of Rs.5,00,000/- as compensation.



4. Brief substance of the counter filed by the first respondent, in M.A.C.T.O.P.No. 389 of 1999, is as follows:-

The insurance policy was in force. The driver of the vehicle was having a valid driving licence and the second respondent alone is liable to pay compensation.

5. Brief substance of the counter filed by the second respondent, in M.A.C.T.O.P.No. 389 of 1999, is as follows:-

The driver drove the mini bus in a slow and careful manner. While the school students crossed the road, the driver, who drove the vehicle, to avoid a major accident applied sudden brake and the said mini bus capsized. There is no necessity for the respondent to pay any compensation.

6. Another minor, who sustained injury in the same accident has filed a petition in M.C.O.P.No.380 of 1998, a common judgment was passed by the Tribunal. This appeal is filed only against the order in M.C.O.P.No.389 of 1999. In the common trial, five witnesses were examined and nine documents were marked, on the side of the petitioner. One witness was examined and two documents were marked, on the side of the respondents. The Tribunal, after considering both sides, has awarded a sum of Rs.45,000/- as compensation to the claimant. Against the same, the minor claimant / appellant has preferred this Civil Miscellaneous Appeal, for enhancement.

7. On the side of the appellant, it is stated that the Tribunal is wrong in awarding only Rs.45,000/- when the claim is for Rs.5,00,000/-. Future carrier of the injured boy would be affected and the boy cannot lead a normal life, due to the disability. The appellant has to remain bald for ever and the Tribunal has awarded only 30,000/- as compensation. The evidence of P.W.5/Doctor was not properly appreciated by the Tribunal. The Tribunal ought to have awarded Rs.50,000/- towards medical expenses and attendant charges etc., Rs.500/- towards transport charges, Rs.25,000/- towards extra nourishment, Rs.2,00,000/- towards partial permanent disability and Rs.2,00,000/- towards loss of earning capacity.

8. On the side of the appellant, it is further stated that the petitioner sustained head injuries, he was unconscious for seven days and the skull of the appellant was broken still now he is not able to work. Judgment of this Court in C.M.A.No.1072 of 2017 (Minor.Kalpna Vs. Velliangiri and others), dated 20.01.2020 and C.M.A.842 of 2021 (A.Suni Kumar Vs. M.C. Vigil Prakash and another), dated 29.03.2021 are cited.

9. The learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court reported in **2013-S.A.R. (Civil)-1088 (Master Mallikarjun V. Divisional Manager, National**



Insurance Company Ltd and another), wherein, it is stated as follows:-

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 upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick.

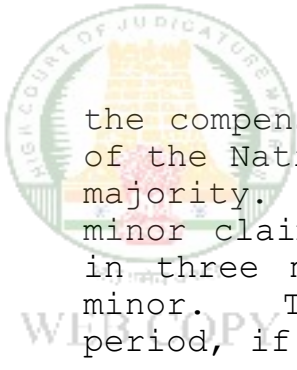
10. On the side of the respondents, it is stated that the Tribunal has rightly fixed compensation and prayed the appeal to be dismissed.

11. O.P sheet was marked as Ex.P5. Copy of the wound certificate was marked as Ex.P6. Disability Certificate was marked as Ex.P9. P.W.5 / Doctor has deposed that the claimant has sustained 35% disability. The accident took place in the year 1999. Hence, the Tribunal has awarded Rs.30,000/- for the permanent disability and the same is enhanced to Rs.35,000/- (1% Disability = Rs.1,000/-). The Tribunal has awarded Rs.5,000/- towards extra nourishment, Rs.5,000/- towards pain and sufferings and Rs.5,000/- towards medical expenses.

12. The award is hereby enhanced to Rs.20,000/- for pain and sufferings, Rs.5,000/- for medical expenses and Rs.5,000/- for attender charges, Rs.15,000/- for future medical expenses and Rs.500/- for transport expenses and Rs.5,000/- for extra nourishment. In total, the claimant is entitled for a sum of Rs.85,500/- as compensation.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the award, made in M.A.C.T.O.P.No. 389 of 1999, on the file of the Motor Accidents Claims Tribunal - Principal District Court, Pudukkottai, dated 04.02.2002, is hereby enhanced from Rs.45,000/- to **Rs.85,500/-**. No costs.

14. The second respondent /Insurance Company is directed to deposit Rs.85,500/- (Rupees Eighty Five Thousand and Five Hundred only) along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and cost within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount, if already deposited. The Tribunal is directed to deposit



the compensation of the minor claimant /appellant herein in any one of the Nationalised Bank, in a Fixed Deposit scheme, till he attains majority. One Karuppaiah, who is the father and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

To

1.The Principal District Judge,
MOTOR ACCIDENT CLAIMS TRIBUNAL.
Pudukottai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-38161[F] dated 10/12/2021)

+1 CC to M/s.V.AYYADURAI, Advocate (SR-38088[F] dated 10/12/2021)

C.M.A(MD) No.1194 of 2013
09.12.2021

TP(CO)

KB(11.02.2022) 4P 6C