

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 12.03.2021****CORAM:****THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

WEB COPY

C.M.A(MD)No.318 of 2018

Minor Jenish Richard
(Minor Appellant represented
through his father and natural
guardian Kanagappan)

: Appellant/Petitioner

Vs.

1.V.Rajagopal

2.The Oriental Insurance Company Limited,
Mahalakshmi Mansion,
1st Floor, No.14-1, Main Road,
Gandhi Nagar, Adayar,
Chennai-20

Through its Branch Manager

: Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 16.02.2016, made in MCOP No.172 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Srivilliputhur.

For Appellant : Mr.R.Ragavendran
For 1st Respondent : Mr.A.Balaji
For 2nd Respondent : Mr.K.Bhaskaran

J U D G M E N T

Challenge made in this appeal is to the award, dated 16.02.2016, made in MCOP No.172 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Srivilliputhur.

2.The short facts of the case is that on 21.08.2013 at about 02.00 pm, while the minor claimant waking with his parents and brother on the left side near Punitha Susaiappar School on Rajapalayam-Tenkasi Main Road, a Bajij Discover motor cycle TN-07-AL-4432 came in a rash and negligent manner and dashed behind the claimant. Due to it, the minor claimant sustained comminuted fracture on the left leg, severe head injury, lacerated wound on the right leg and left side of hip and all over his body. Immediately, after the accident, he was taken to G.V Ortho Hospital, Rajapalayam and then, to Shenbagam Hospital, Madurai, for treatment and underwent surgery and plates have been fixed. A claim petition was filed by the injured claimant seeking compensation of Rs.5,00,000/- on the ground that the offending vehicle caused the accident.

3.The claim was opposed by the 2nd Respondent Insurance Company

disputing the manner of accident and their liability to pay compensation.

4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle caused the accident and awarded compensation of Rs.1,86,982/- together with interest @ 7.5% p.a

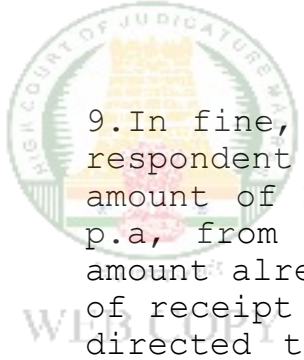
5.Heard both sides and perused the materials available on record.

6.The learned counsel appearing for the appellant submitted that the tribunal without considering the documents produced on the side of the claimant, has awarded meagre compensation and the tribunal ought to have awarded a considerable amount towards future medical expenses and prays for enhancement of compensation. On the other hand, the learned appearing for the respondents argued the case in support of the findings of the tribunal.

7.With regard to the accident, a criminal case was registered against the rider of the motor cycle. Ex.P1 FIR stands registered, based on the complaint given by PW1. PW1 has given evidence stating that his minor son sustained injuries in the alleged accident. PW2 is the Orthopedic Doctor, who examined the minor claimant. He deposed that the minor claimant got fracture due to the accident and he has not issued any disability certificate and due to the grievous injury, he would have suffered mental agony, undergone pain and sufferings. Based on the evidence, the tribunal has awarded Rs.20,000/- towards pain and sufferings, nutritious food and attender expenses; Rs.1,59,837/- towards medical expenses (Exs.P4, P7, P8, P10 to P13) and Rs.7,145/- towards transportation charges. In total, the tribunal has awarded **Rs.1,86,982/-** together with interest @ 7.5% p.a.

8.It is seen from the records that even though the tribunal awarded compensation, this court finds that the award of the tribunal under various heads are to be enhanced to some extent and they have to be given under separate heads. Accordingly, the award of the compensation is re-calculated as under:-

Head of compensation	Award of the tribunal (Rs.)	Award of this court (Rs.)
Pain and sufferings etc.	20,000/-	30,000/-
Nutritious Food	-	15,000/-
Attender expenses	-	4,000/-
Medical expenses (As per Exs.P4, P7, P,8, P10 to P13)	1,59,837/-	1,59,837/-
Transportation charges (as per Ex.)5 and P6)	7,145/-	7,145/-
Total	1,86,982/-	2,15,982/-



9. In fine, the Civil Miscellaneous Appeal is partly allowed. The 2nd respondent Insurance Company is directed to deposit the modified amount of Rs.2,15,982/- together with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to deposit the modified award amount in any one of the nationalized bank in a fixed deposit scheme until the minor attains majority. The father and natural guardian of the minor claimant Kanagappan is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor. The claimant shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)

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To,

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate,
Virudhunagar at Srivilliputtur.

Copy to

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. 2 Copies

Judgment made in
CMA(MD) No.318 of 2018

12.03.2021

CN(02.06.2021) 3P C4