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CMA.Nos.2207 & 2208 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.2207 & 2208 of 2013

[CMA.No.2207 of 2013]

Minor Vishnu Varathan
Rep. by his Mother & Natural Guardian
Mrs. Muthu Lakshmi

... Appellant / petitioner

Vs.

1.B.Suseela

2.The Branch Manager,
The New India Insurance Company Ltd,
Thanjavur Town,
Thanjavur District.

... Respondents/Respondents

[CMA.No.2208 of 2013]

Muthu Lakshmi

... Appellant / petitioner

Vs.



CMA.Nos.2207 & 2208 of 2013

1.B.Suseela

2.The Branch Manager,
The New India Insurance Company Ltd,
Thanjavur Town,
Thanjavur District.

... Respondents/Respondents

PRAYER in CMA.No.2207 of 2013 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 25.03.2011 passed in MCOP No.77 of 2009 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court, Thiruvarur.

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.Micheal Visuvasam [R.2]
: Died [R.1]

PRAYER in CMA.No.2208 of 2013 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 25.03.2011 passed in MCOP No.78 of 2009 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Thiruvarur.

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.Micheal Visuvasam [R.2]
: Died [R.1]



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COMMON JUDGEMENT

The claimants before the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Thiruvarur are the appellants before this Court in these two appeals.

2. CMA.No.2207 of 2013 is filed seeking an enhancement of the award passed in MCOP No.77 of 2009 and CMA.No.2208 of 2013 is filed for enhancing the award granted in MCOP No.78 of 2020. The facts in brief are as follows:-

3. MCOP No.77 of 2009 has been filed seeking compensation for the injuries sustained by minor Vishnu who is just aged about 2 years at the time of the accident. The compensation that was claimed was a sum of Rs.3,50,200/-.

4. MCOP No.78 of 2009 has been filed seeking compensation for the injuries sustained by the mother of the said Vishnu, Muthu Lakshmi and she had claimed a compensation of a sum of Rs.6,04,200/-.



5. The accident had occurred on 02.09.2008, when the mother and her

WEB COPY baby son were travelling in the bus belonging to the 1st respondent bearing Registration No. TN 49 M 1177, proceeding on the Thanjavur to Tiruvarur Main Road. The driver of the bus drove the same rashly and negligently and at an uncontrollable speed. While the bus attempted to take a curve near the Muneeswaran Temple, the bus capsized causing injuries to both the mother and the child. The baby, Vishnu Varathan has suffered the following injuries as per Ex.P.6, injury certificate.

"L - Hand - Fracture proximal Phalanx Thumb

- Index Finger Amputation MCP Joint

- Middle Finger Amputation Distal Phalanx Level."

The mother, Muthu Lakshmi had suffered the following injuries as per Ex.P.3, injury certificate.

"L - Hand - Amputation Index Finger MPX Level.

- Amputation Middle Finger DIP Joint Level.

- Amputation Ring Finger

- Amputation Little Finger DIP Joint"



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6. The Tribunal below had awarded a compensation of a sum of Rs.1,15,470/- to the petitioner in M.C.O.P.No.78 of 2009. A sum of Rs.60,000/- only has been granted under the head of disability, though the appellant in CMA No.2208 of 2013 had been sustained 60% disability. The petitioner in MCOP No.77 of 2009 was awarded a compensation of a sum of Rs.1,00,006/-. Once again only a sum of Rs.60,000/- has been granted under the head of disability, though the disability was assessed at 60%. The appellants are aggrieved by the low amounts that have been granted under the head of disability, despite they having suffered amputation of their fingers.

7. Heard the counsels on either side.

8. With regard to the compensation for the petitioner in MCOP No.77 of 2009 as stated earlier, the petitioner had suffered amputation of his fingers at a tender age of 2. Even as per the assessment of disability under the Workmen's Compensation Act, the disabilities can be assessed at 51%. Being a minor the notional income shall be fixed at a sum of Rs.15,000/-



and the compensation shall be $15,000 \times 15 \times 51\% = 1,14,750/-$. The small child must have undergone unbearable pain at that relevant point of time.

The Tribunal has only awarded a sum of Rs.28,000/-under this head, the same is enhanced to a sum of Rs.50,000/-. Therefore, the award passed in MCOP.No.77 of 2009 is modified as follows:-

[M.C.O.P.No.77 of 2009]

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	For Partial Permanent Disability	60,000/-	1,14,750/-	Enhanced
2.	For Pain and Sufferings	28,000/-	50,000/-	Enhanced
3.	Medical Expenses	6,006/-	6,006/-	Confirmed
4.	For Extra Nourishment	5,000/-	5,000/-	Confirmed
5.	Attender Charges	1,000/-	1,000/-	Confirmed
	TOTAL	1,00,006/-	1,76,756/-	enhanced by Rs.76,750/-

9. As regards the compensation payable to the petitioner in MCOP No.78 of 2009, considering the injuries sustained by her and the amputation of the fingers, the disability is assessed as per the Workmen's Compensation Act at 26%. A notional income of 6,500/- is adopted, the compensation under the head of disability would be $6,000/- \times 12 \times 18 \times 26\% =$



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Rs.3,65,040/-. In all other respect, the award of the Tribunal remains unaltered. Therefore, the award passed in MCOP.No.78 of 2009 is modified as follows:-

[M.C.O.P.No.78 of 2009]

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	For Partial Permanent Disability	60,000/-	3,65,040/-	Enhanced
2.	Medical Expenses	21,970/-	21,970/-	Confirmed
3.	For Pain and Sufferings	25,000/-	25,000/-	Confirmed
4.	Extra Nourishment	5,000/-	5,000/-	Confirmed
4.	Loss of income	2,000/-	2,000/-	Confirmed
5.	Attender Charges	1,500/-	1,500/-	Confirmed
	TOTAL	1,15,470/-	4,20,510/-	enhanced by Rs.3,05,040/-

10. Therefore, both the Civil Miscellaneous Appeals are allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.1,76,756 /- from Rs.1,00,006 /- [in M.C.O.P.No.77 of 2009] and to a sum of Rs.4,20,510/- from Rs. 1,15,470/- [in M.C.O.P.No.78 of 2009] together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed.



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The 2nd respondent/insurance company is directed to deposit the said amount (Rs.1,76,756/-) & (Rs.4,20,510/-) to the credit of MCOP Nos.77 & 78 of 2009 respectively on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Thiruvarur together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the petitioner in (MCOP No.78 of 2009) is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn. Since the appellant being a minor in MCOP.No.77 of 2009, the award amount now determined by this Court along with interest and costs shall be deposited in an interest bearing fixed deposit in any Nationalized bank till he attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the mother (Natural Guardian)/petitioner [in CMA.No.2208 of 2013] once in 3 months directly from the bank. If the minor has attained the age of majority, it is open to him to file a formal petition before the Tribunal to get his award amount. The petitioners/appellants in both the MCOPs shall pay the Court fee for the



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enhanced amount, if payable. The Tribunal shall not disburse award amount till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs.

27.10.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate Court), Thiruvavarur.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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P.T. ASHA, J,

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