



C.M.A.No.1643 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1643 of 2018

Minor. Vasanthakumar,
Rep. by his father and natural guardian,
Paramasivam

... Appellant

Vs

1.V.Babu

2.P.Sunildass

3.United India Insurance Company Ltd.,
Trissur.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the compensation amount awarded in the Judgment and Decree dated 25.10.2016 made in M.C.O.P.No.85 of 2014 on the file of the learned Special Subordinate Judge/Motor Accidents Claims Tribunal, Pollachi by allowing this Civil Miscellaneous Appeal.

For Appellant	: Mr.D.Arun Kumar
For R1 & R2	: Mr.A.Vijaya Sankar (In SR Stage)
	No appearance
For R3	: Mr.D.Bhaskaran



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JUDGEMENT

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The above appeal is filed by the petitioner/claimant seeking an enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Pollachi in M.C.O.P.No.85 of 2014.

2.The facts in brief are as follows :-

(i) The appellant, who is a minor had sustained grievous injuries in a road accident on 18.10.2012 involving the vehicle belonging to the second respondent, driven by the first respondent and insured with the third respondent. The appellant had claimed a total compensation of a sum of Rs.10,00,000/-.

(ii) The first and second respondent remained *ex-parte* and it was only the third respondent, who had contested the claim denying the liability to pay and also claiming that the accident was not the result of the negligence on the part of the first respondent driver. The Tribunal below has



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fastened the negligence on the first respondent and therefore, held that the respondents 2 and 3 are liable to pay the compensation of a sum of Rs.1,03,089/-.

3. Aggrieved by the compensation granted by the Tribunal, the appellant has moved the above appeal.

4. The learned counsel appearing on behalf of the appellant would submit that the appellant had been hospitalised for over three sessions and had also undergone surgeries, however, the Tribunal has not granted any amount towards the injuries. He would submit that the amounts granted under the head of pain and sufferings and extra nourishment is inadequate. That apart, no amount has been granted under the head of transport and attender charges.

5. The learned counsel appearing for the third respondent/Insurance Company would submit that the award is in order as the doctor has clearly



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adduced in his evidence that the appellant has recovered and does not suffer from any disability on account of the accident.

6.Heard the counsels on either side and perused the materials available on record.

7.Admittedly, the appellant, who was then just aged about 12 years had sustained grievous injuries to his right and left leg ankle and knee fractured and he has been admitted in the hospital for surgeries from 18.10.2012 to 25.10.2012 and 21.04.2014 to 23.04.2014 and thereafter, on 22.04.2014. It is seen that a plate, screw and wires have been fixed on the ankle of the appellant. The Tribunal has not granted any amounts under the head of injuries. Therefore, a sum of Rs.25,000/- has to be awarded under the head of compensation for injuries. Though the appellant had been admitted on three occasions for surgeries, the Tribunal has only granted a sum of Rs.15,000/- towards pain and sufferings, which shall stand enhanced to a sum of Rs.50,000/-. No amount has been granted under the head of



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transportation and the amount granted under the head of nourishment is on the lower side. Therefore, a sum of Rs.20,000/- shall be awarded under the head of transportation charges and extra nourishment. The appellant, who was a minor at the time of accident has been admitted in the hospital on three occasions and being a minor, he would definitely have somebody to attend on him. Therefore, a sum of Rs.10,000/- is granted under the head of attender charges and the amount under the head of medical bill shall remain unaltered. Therefore, the total compensation payable is as follows:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Award by this Court (Amount in Rs.)</i>
Medical Bills	78,089	78,089
Compensation for injuries	-	25,000
Pain and sufferings	15,000	50,000 (enhanced)
Transportation charges	-	20,000
Nourishment	10,000	
Attender charges	-	10,000
Total	1,03,089	1,83,089



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8. When the claim petition was filed in the year 2014, the appellant was aged about 12 years. Now, the appellant should be aged about 20 years and is therefore, a major. Though no application has been taken out to declare him as a major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellant as major and discharges his father Paramasivam from the guardianship. The Registry shall carry out the necessary amendments.

9. Since there is a violation of the policy conditions as the driver of the vehicle did not possess valid driving licence, the Tribunal had directed pay and recovery. Accordingly, C.M.A. is allowed and the third respondent/Insurance Company is directed to deposit the sum of Rs.1,84,000/- (rounded off) to the credit of M.C.O.P.No.85 of 2014, along with interest at the rate of 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 judgment and thereafter, the third



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respondent/Insurance Company shall recover the said amount from the second respondent without resorting to a separate proceedings for recovery of money. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount, less, the amount, if any already withdrawn. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimant. There shall be no order as to costs in the present appeal.

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Index : Yes/No
Speaking order/non-speaking order
sp

To

- 1.The Special Subordinate Judge/Motor Accidents Claims Tribunal, Pollachi.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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