

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1150 of 2022

Minor Dhanasekar
Represented by his mother
and next friend Dhatchayani ... Appellant/Petitioner

Vs.

1.P.Sridhar

2.The New India Assurance Company Limited
Motor Third Party Claims Office
No.232, Bombay Mutual Building
6th floor, NSC Bose Road
Chennai-600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2021 made in M.C.O.P.No.7264 of 2018 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.J.Chandran

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 20.11.2021 made in M.C.O.P.No.7264 of 2018 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The minor appellant is the claimant in M.C.O.P.No.7264 of 2018 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The minor appellant represented by his mother filed the said claim petition claiming a sum of Rs.73,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.10.2018.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the mini bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini bus to pay a sum of Rs.20,74,300/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the injured appellant was a minor boy aged 13 years and was studying IX standard at the time of accident. The Tribunal erred in fixing meagre sum of Rs.9,000/- as monthly income of the appellant and the Tribunal ought to have applied multiplier '18' instead of '15'. In the accident, the appellant suffered fractures over his ribs, hip and multiple injuries all over the body. Due to the injuries, the right hand of the appellant was amputated. After the accident, he could not continue his studies properly. The Tribunal ought to have fixed the disability at 100% and awarded compensation towards loss of earning due to disability. The Assistant Professor, Department of Orthopaedics, Government Medical College Hospital, Chengalpattu, assessed the disability of the appellant at 90%. The Tribunal without any reason, reduced the disability to 80%. Due to the injuries sustained in the accident, the appellant lost his marital prospects. The Tribunal has not awarded any compensation towards loss of marital prospects and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant was aged 14 years and was studying IX standard at the time of accident. The Tribunal has rightly applied multiplier '15'. The amounts awarded by the Tribunal under different heads are excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the

appeal.

7. Heard the learned counsel appearing for the appellant as well as 2nd respondent/Insurance Company and perused all the materials available on record.

8. From the materials on record, it is seen that it is the case of the appellant that in the accident, he suffered fractures over his ribs, hip and multiple injuries all over the body. Due to the injuries, the right hand of the appellant was amputated. According to the appellant, he suffered 90% disability. To substantiate his case, the appellant relied on Ex.P10/Disability certificate issued by the Assistant Professor, Department of Orthopaedics, Government Medical College Hospital, Chengalpat, who certified that the appellant suffered 90% disability. According to the appellant, due to amputation, he could not continue his studies and the Tribunal ought to have fixed the disability of the appellant at 100%, but the Tribunal erroneously reduced the disability to 80% without any reason. This contention of the learned counsel appearing for the appellant is not acceptable as appellant has not let in any evidence to show that he suffered 100% disability and he could not do his day-to-day activities without help of others. Further no document was marked to show that his studies were affected and he could not continue his studies. The Tribunal in the absence of material evidence, considering the fact that the injury suffered by the appellant is a schedule injury, fixed 80% disability. There is no error in the said finding of the Tribunal.

8(i). The appellant was minor at the time of accident and he was a non-earning member. Due to amputation of his right hand, his studies and avocation will be reduced. His prospect of earning decent income will also be reduced. The Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant. Considering the age and nature of injuries sustained by the minor boy, the monthly income fixed by the Tribunal is enhanced to Rs.12,000/-. The contention of the learned counsel appearing for the appellant that Tribunal ought to have applied multiplier '18' instead of '15' is contrary to the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another). The appellant was aged 14 years at the time of accident. The Tribunal has rightly applied multiplier '15'. The Tribunal, following the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], granted 40% enhancement towards future

prospects. By fixing a sum of Rs.12,000/- per month as notional income, the amount granted by the Tribunal towards loss of earning due to disability is modified to Rs.24,19,200/- (Rs.12,000/- + 4800 (Rs.12,000/- X 40%) X 12 X 15 X 80/100).

8(ii).The appellant has taken treatment as in-patient in MIOT International Hospital from 14.10.2018 to 02.11.2018, underwent two surgeries and his right hand was amputated. The Tribunal considering Ex.P3/discharge summary, held that the appellant could be required an attendar for another 39 days and awarded a sum of Rs.24,000/- (Rs.400/- X 60) towards attendant charges for totally 60 days by fixing Rs.400/- per day. The amounts awarded by the Tribunal towards attendant charges, loss of amenities and extra nourishment are meagre. Considering the injuries sustained by the minor appellant and period of treatment taken, the amounts awarded by the Tribunal towards attendant charges, loss of amenities and extra nourishment are hereby enhanced to Rs.60,000/-, Rs.75,000/- and Rs.75,000/- respectively. Considering the age of the minor student and the fact that his right hand has been amputated, his marital prospects will be reduced, a sum of Rs.1,00,000/- is awarded towards loss of marital prospects. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning due to disability	18,14,400	24,19,200	Enhanced
2.	Medical expenses	25,851	25,851	Confirmed
3.	Attendant charges	24,000	60,000	Enhanced
4.	Loss of amenities	10,000	75,000	Enhanced

5.	Loss of expectation of life	10,000	10,000	Confirmed
6.	Pain and suffering	1,50,000	1,50,000	Confirmed
7.	Extra nourishment	25,000	75,000	Enhanced
8.	Transportation	15,000	15,000	Confirmed
9.	Loss of marital prospects	-	1,00,000	Granted
	Total	20,74,251 rounded off to 20,74,300	29,30,051 rounded off to 29,30,100	Enhanced by Rs.8,55,800/ to -

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,74,300/- is hereby enhanced to Rs.29,30,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the award of the minor appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the minor appellant viz., Dhatchayani, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The II Judge
Motor Accident Claims Tribunal
Small Causes Court
Chennai.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.36066
+1cc to Mr.J.Chandran, Advocate SR.No.35417

C.M.A.No.1150 of 2022

VBM(CO)
CB(29/07/2022)