



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.394 of 2017

Minor Imran,
Rep. by his father and next friend
Mr.Abdul Kadhar,
No.1529, 64th Block, SM Nagar,
Vyasarpadi,
Chennai - 600 039.

... Appellant/Petitioner

Vs.

1. M/s.Sun Metals Factory (1) Pvt. Ltd.,
No.2, Singara Garden 4th Street,
Washermenpet,
Chennai - 600 021.

2. New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 001.

...Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree passed in M.A.T.C.O.P.No.4324 of 2010, dated 11.01.2013, on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant	:Mr.F.Terry Chella Raja
For R1	:Set ex-parte before the Tribunal
For R2	:Mrs.A.Salomi
	For Mr.C.Ramesh Babu

JUDGMENT

The claimant in M.A.T.C.O.P.No.4324 of 2010, on the file of the II Small Causes Court/ Motor Accidents Claims Tribunal, Chennai is the appellant herein. Aggrieved by the quantum of compensation granted by the Judgment dated 11.01.2013, the



claimant has filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.

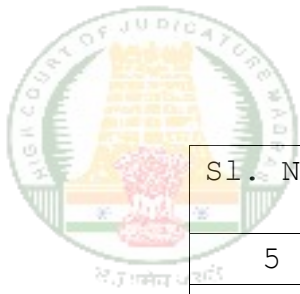
2.The injured was a young child, aged about 4 years and was represented by his father before the Tribunal. The child is also the appellant and is again represented by his father in this present appeal.

3.Heard Mr.F.Terry Chella Raja, learned counsel for the appellant and Mrs.Salomi learned counsel for the second respondent/New India Insurance Company Limited. The first respondent had remained ex-parte before the Tribunal and there is no representation on behalf of the first respondent before this Court also.

4. Perusal of the records shows that the accident necessitating filing of the claim petition had taken place on 21.07.2009 at Sathiyamurthy Nagar, Main Road, when the child was standing on the left side of the road. At that time a TATA van bearing registration No.TN 04 V 6838, hit the young child, who fell down on the ground, and as a result of which, the child suffered "Right shoulder dislocation Right ear hearing impaired. Both ears hearing impaired". The nature of injuries are mentioned in the Discharge summary issued by the Government Stanley Hospital. A perusal of the same shows that they are quite serious in nature and would affect the child even till this date.

5. The Tribunal, on consideration of the evidence of P.W.2/Medical expert, who assessed the disability at 60% and also on considering the age and injury sustained by the young boy, had granted a sum of Rs.2,000/- per percentage and accordingly, a sum of Rs.1,20,000/- was granted towards disability on that particular head. Thereafter, under various other heads, compensation was also granted. The complete details are as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs)
1	Transportation	Rs.5,000/-
2	Extra-nourishment	Rs.5,000/-
3	Medical Expenses	Rs.10,000/-
4	Future Medical Expenses	Rs.10,000/-



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Sl. No.	Description	Amount awarded by the Tribunal (Rs)
5	Attendant Charges	Rs.5,000/-
6	Loss of amenities of life and mental agony to the petitioner	Rs.25,000/-
7	Pain and sufferings	Rs.25,000/-
8	Disability of 60% at the rate of Rs.2,000/- per percentage	Rs.1,20,000/-
9	Loss of Education	Rs.25,000/-
	Total Compensation	Rs.2,30,000/-

6. The learned counsel for the 2nd respondent has taken umbrage with respect to the evidence of P.W.2/Medical expert and stated that the said medical expert was not the Doctor who treated the victim, but had assessed the disability on the basis of the Discharge Summary and therefore no credentials can be attached to the said evidence. He had assessed the disability as 65%. It was also stated by the learned counsel that he did not examine the disability in relation to the whole body and therefore, this Court should ignore such assessment.

7. When a child or anybody suffers head injury, then, the disability which is assessed is with respect to the whole body, because the brain controls the activity of all other nerves and therefore the disability need not relate back to the whole body, particularly since there is a strong possibility of the functioning of the entire body being affected.

8. The learned counsel for the appellant, relied on 2013 (2) TNMAC 338 [Master Mallikarjun vs. Divisional Manager, National Insurance Company Limited and another]. The relevant paragraphs of the above said judgment are as follows:

"8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than



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one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

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

9. Keeping in mind the principles enunciated above, I would grant Rs.4,00,000/- as compensation for the injuries suffered, though the nature of injuries since the disability is certainly 60%. It might require further examination and for future medical expenses, I would further grant a sum of Rs.10,000/- additionally. Thus the total compensation is arrived



at Rs.4,10,000/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,000/- is hereby enhanced to Rs.4,10,000/- [Rupees Four Lakhs and Ten Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit 50% of the enhanced 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 to the credit of M.C.O.P.No.4324 of 2010. On such deposit, the guardian of the minor appellant/claimant is permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. The balance 50% of the enhanced award amount is to be deposited in any one of the Nationalized Banks, in any interest bearing Fixed Deposit Scheme till the minor appellant/claimant attains majority. On such deposit, the guardian of the minor appellant viz., Mr.Abdul Kadhar, being the father of the minor appellant/claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant/claimant. Since this Court had enhanced the compensation, the guardian of the minor appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the Award of the Tribunal shall stand confirmed. It is made clear that the appellant is not entitled to any interest for the delay period as per the order of this Court dated 12.01.2017 made in C.M.P.No.8215 of 2016 in C.M.A.SR.No.31253 of 2016. There shall be no order as to costs in the present appeal.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

ssi/dua

To

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



2.The Section Officer,
VR Section,
High Court, Madras.

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+1cc to M/s.M.Malar, Advocate SR.No.10365

+1cc to Mr.C.Ramesh Babu, Advocate SR.No.10098

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SR(CO)
CB(16/03/2022)