



C.M.A.No.3594 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 31.03.2023

Pronounced on : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3594 of 2013

Minor Madhanraj ... Appellant
(Minor being represented by Natural guardian and Mother
D.Umamaheswari)

vs.

1.K.Raju
2.V.Sumathi
3.The New India Assurance Co. Ltd.,
1st Floor, Amman Complex,
No.1360, E.V.N.Road,
Erode.
4.Dhandapani
5.National Insurance Company Ltd.,
Gobichettipalayam Town,
Gobichettipalayam.
6.V.Karikalan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal (II Additional District Court), Erode in M.C.O.P.No.65 of 2011 dated 28.06.2013.



WEB COPY



C.M.A.No.3594 of 2013

For Appellant : Ms.H.Kavitha

For 3rd Respondent : Mr.C.Ramesh Babu

For 5th Respondent : Mr.K.Padmanabhan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants / claimants herein against the Judgment and decree passed in M.C.O.P.No65 of 2011 dated 28.06.2013 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court), Erode for enhancement of compensation.

2. The claimant had filed this claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- in M.C.O.P.No.65 of 2011 from the respondents.



C.M.A.No.3594 of 2013

3. In M.C.O.P.No.65 of 2011, the learned Tribunal, upon considering the evidence, has passed an award for an amount of Rs.88,700/- was granted and liability on the third respondent / Insurance Company with 7.5% interest from the date of filing of the claim petition till the date of realization.

4. It is the evidence of P.W.1 that on 16.05.2010 at about 11.40 am., one Shanmugam along with his daughter Umamaheswari, her minor children Madhanraj and minor Pradeep while they were proceeding in the TATA Indica Car bearing registration No.TN 07 AY 5946 from Erode to Gobichettipalayam near Kullapalayam Pirivu, a bus bearing registration No.TN 33 AD 9519 came at a high speed and driven by the driver in a rash and negligent manner, from the opposite direction and dashed against the car. Eventually, the car got heavily damaged and the said Shanmugam died on the way to the hospital and others sustained serious injuries and fractures, is not in dispute.

5. Since as the claim petition is filed based on a same accident



C.M.A.No.3594 of 2013

the claim petition has been taken together by recording evidence, judgment in the M.C.O.P came to be passed by the learned Tribunal.

6. To substantiate the claims putforth in the claim petition four witnesses one of the injured Umamaheswari, Doctor Periyasamy, Doctor Ramamoorthy, V.V.Mathiyazhagan have been examined as P.W.1 to P.W.4. Exs.P1 to P39 have been marked. On the third respondent side K.Raju, driver of the 2nd respondent bus was examined as R.W.1. No document was marked by the respondent's side.

7. On behalf of the third respondent resisted the above said claims by way of filing counter as follows:

The petitioners were put to proof of the accident, age, occupation and income of the deceased are not admitted by the third respondent and the claim is excessive.

8. On behalf of the fifth respondent / National Insurance Company Limited, Chennai the claim petitions are resisted by filing



C.M.A.No.3594 of 2013

counter as follows:

WEB COPY

The accident took place only due to the negligent driving of the driver of the bus namely first respondent. The case was registered against the first respondent, driver of the bus. The fifth respondent / Insurance Company is not liable to pay any compensation and the claim is excessive.

9. The learned counsel for the appellant / claimant would vehemently contend that the minor Madhanraj sustained fractures for which disability was assessed as 20% but the tribunal has reduced the same to 15% is not correct. The amounts granted for transport expenses, extra nourishment and for pain and sufferings are less and prayed for enhancement of the compensation.

10. The learned counsel for the fifth respondent / National Insurance Company would putforth that the tribunal has not fastened liability against the fifth respondent. The stand of the



C.M.A.No.3594 of 2013

claimants that due to the rash and negligent driving of the driver of the bus only accident happened was accepted by the tribunal and consequently the owner of the bus and the Insurance Company of the bus namely third respondent were held jointly and severally liable to pay compensation. The First Information Report was also registered against the driver of the bus namely the first respondent herein. Therefore, the order of the tribunal be confirmed.

11. It is the evidence of P.W.1 Umamaheswari that her son minor Madhanraj, was studying VII Standard suffered fracture of right femur and right tibia. The medical records namely would certificate, discharge summaries were marked as Exs.P17, P19, P20 respectively. It could be seen from Ex.P19 and P20 discharge summaries that the minor had taken treatment as inpatient at Senthil Multi Speciality Hospital, Erode from 16.05.2010 to 17.05.2010. Thereafter, he was shifted to Ganga Hospital, Coimbatore for further treatment from 17.05.2010 to 21.05.2010. P.W.2 Doctor Periyasamy Orthopedic Surgeon has assessed the disability of the minor as 20%. It is his evidence that he is not able to walk freely and he limps while



C.M.A.No.3594 of 2013

walking. He has also stated that the minor suffered malunion of bones over the right femur and right tibia. Relying upon the medical records and the evidence of P.W.2, an amount of Rs.10,000/- each is granted for transport expenses and for extra nourishment. For pain and sufferings, an amount of Rs.15,000/- is granted, for partial permanent disability suffered by the minor, an amount of Rs.10,000/- is granted in addition to the amount already granted by the tribunal and in all other aspects the amounts awarded by the tribunal appears to be reasonable and need no interference. The compensation awarded is reworked and tabulated as follows:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Transport to Hospital	Rs.5,000/-	Rs.10,000/-	Enhanced



C.M.A.No.3594 of 2013

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
2	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
3	Medical Expenditure	Rs.51,200	Rs.51,200/-	Confirmed
4	Pain and Sufferings	Rs.5,000/-	Rs. 15,000/-	Enhanced
5	Loss of Future amenities	Rs.22,500/-	Rs. 22,500/-	Confirmed
6	Partial Permanent Disability	---	Rs.10,000/-	Granted
	Total	Rs.88,700/-	Rs.1,18,700/-	Enhanced

12. Heard the rival submissions put forth by both sides' learned counsels. Perused the entire materials available on record.

13. Thus, the compensation awarded by the Tribunal is enhanced which would carry interest at the rate of 7.5% per annum



C.M.A.No.3594 of 2013

from the date of petition till the date of realisation.

WEB COPY

14. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.88,700/-** to **Rs.1,18,700/-**.

(iii) The 3rd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.1,18,700/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition** till the date of deposit to the credit of M.C.O.P.No.65 of 2011 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court, Erode), within a period of *eight weeks* from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall



C.M.A.No.3594 of 2013

disburse the enhanced amount upon production of the certified copy

showing proof of payment of Court fee by the claimant.

31.07.2023

(3/4)

Index : Yes/No

Speaking / Non-speaking order

rna

To

1. The Motor Accident Claims Tribunal,
(II Additional District Court), Erode.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

rna



WEB COPY



C.M.A.No.3594 of 2013

C.M.A.No.3594 of 2013

31.07.2023