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C.M.A.No.1079 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.8.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1079 of 2018

N.Navin Kumar (Minor)

Rep. by his father and next friend,

N.Narayanamoorthy

... Appellant

Vs.

A.Ramesh

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount Awarded in the Judgment and Decree dated 20.10.2017 made in M.C.O.P.No.4644 of 2013 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai.

For Appellant : M/s.C.Swetha for
Mr.A.Thiyagarajan

For Respondent : No Appearance



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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and Decree dated 20.10.2017 made in M.C.O.P.No.4644 of 2013 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai, for enhancement of compensation.

2. The appellant is the claimant. The respondent is the owner and driver of the offending vehicle.

3. The case of the claimant who was aged 13 years at the time of accident, is that on 16.11.2012 at about 14.30 hours, when he was waiting to cross the road at Peters Road, near CSI Mohan Matriculation School, Royapettah, after his school hours, a Crane bearing Regn. No.AP-10-AE-5691 which was driven by its driver/owner in a very rash and negligent manner, endangering the public safety, hit an old lady and also the claimant along with four school children and also dashed on a wall, due to which, the wall got collapsed and that the claimant sustained grievous injuries.



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4. Since the claimant was minor at the time of accident, he filed the claim petition in M.C.O.P.No.4644 of 2013 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai, through his father and next friend, claiming compensation of Rs.20,00,000/- from the driver/owner of the offending vehicle/respondent herein, as there is no insurance for the offending vehicle, stating that due to the accident, he sustained multiple injuries all over the body and he took treatment for more than two months in a Government Hospital and during the treatment period, his left leg was amputated.

5. In order to substantiate the case of the claimant before the Tribunal, on the side of the claimant, 1 witness was examined as P.W.1 and 10 documents were marked as Ex.P.1 to Ex.P.10.

6. Before the Tribunal, the respondent was called absent and set ex-parte.

7. The Tribunal, after hearing the arguments of the learned counsel for the claimant and considering the materials, allowed the claim



petition by order dated 20.10.2017 with proportionate costs against the respondent and awarded compensation of Rs.2,95,000/- with interest at 9% per annum from the date of petition i.e. 21.08.2013 till the date of realization.

8. Challenging the order of the Tribunal, the claimant has filed the present appeal before this Court through his father, for enhancement of compensation.

9. The learned counsel for the appellant/claimant would submit that the age of the claimant at the time of accident was only 13 years and due to the accident, his left leg was amputated and the Doctor has given the Disability Certificate assessing the disability of the claimant as 85%. But the Tribunal has awarded only Rs.2,55,000/- by fixing Rs.3,000/- per percentage and that the Tribunal has failed to consider the loss of income of the injured in future. Further, the Attender Charges was not properly awarded by the Tribunal. The claimant was hospitalised for about two months from 16.11.2012 to 11.01.2013, whereas, the Tribunal has granted only Rs.2,000/- towards Attender Charges. The claimant had also undergone physiotherapy treatment and rehabilitation sessions and even though the due bill for



Rs.5,07,700/- was produced before the Court, the same was not considered by the Tribunal. Further, the claimant had produced medical bill for Rs.4,500/-.

But the Tribunal has granted only Rs.2,500/-. Since, the claimant sustained 85% permanent disability, he filed the claim petition seeking compensation of Rs.20,00,000/-, whereas, the Tribunal has awarded only Rs.2,94,500/- which does not reflect the "just compensation" and it is an unfair compensation and therefore, she seeks enhancement of compensation.

10. Though notice was served on the respondent and name is also printed in the cause list, there is no representation for the respondent.

11. Heard the learned counsel for the appellant/claimant and perused the entire materials available on record.

12. The accident and the manner of accident are not in dispute. The injuries sustained by the claimant are also not in dispute. The accident took place in the year 2012. At the relevant point of time, the amount for disability was only Rs.3,000/- per percentage and the Tribunal has also rightly calculated the disability by fixing Rs.3,000/- per percentage.



However, the Tribunal has failed to consider that it is a permanent disability, as the left leg of the claimant was amputated and that the loss of future earning was also not considered by the Tribunal. Though the learned counsel stated that the claimant had also undergone Physiotherapy treatment, no evidence was produced except Ex.P.7/letter issued by the Rehabilitation Institute. Neither the Author of the said document, nor any expert was examined to prove the actual expenses incurred for the Physiotherapy and rehabilitation. Further, neither the injured/claimant nor the Doctor who gave treatment to the injured/claimant or any competent person from the said Institute which issued Ex.P.7, was examined. Therefore, the Tribunal has not considered the same. A perusal of records shows that the claimant was treated in a Government Hospital and therefore, they have not produced any other medical expenses. The claimant has not produced any document to show that he required Physiotherapy treatment, which was not available in the Government Hospital and therefore, he was forced to take treatment from a private Hospital. Admittedly, an injured can take treatment either in a private Hospital or in a Government Hospital. However, in this case, the treatment has been taken in a Government Hospital and he has not given any reason as to why he had chosen to take physiotherapy treatment in private



Hospital and whether any Doctor had referred him to take physiotherapy treatment in private Hospital or because of non availability of said treatment in the Government, he took treatment in the said Institute. As already stated, because of the non examination of any witnesses or expert or Author of Ex.P.7 or any competent person from the Institute which issued the medical certificate to the claimant, the Tribunal has not considered the Physiotherapy Bill/Ex.P7. Though the appellate Court can re- appreciate the entire evidence and can give independent findings, at the same time, it has to see only the materials available on record and it can only re-appreciate the available materials and the appellate Court cannot traverse beyond that materials. However, as stated above, since the claimant was only aged 13 years at the time of accident and his left leg was amputated, naturally he cannot do any work in future. But, the Tribunal has failed to consider the life expenses and his future expenses and the loss of future earnings.

13. Therefore, considering the future of the injured/claimant, this Court awards an additional sum of Rs.5,00,000/- to the claimant, which would meet the ends of justice and this Court feels that it would a "just compensation".



14. Accordingly, the compensation awarded by the Tribunal is re-worked as follows;

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1.	For Medical Bills	Rs.2,500/-	Rs.2,500/-	Confirmed
2.	For Disability	Rs.2,55,000/-	Rs.2,55,000/-	Confirmed
3.	For Attender charges	Rs.2,000/-	Rs.2,000/-	Confirmed
4.	For Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
5.	For Transport to Hospital	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	For Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	For future loss of earnings	-	Rs.5,00,000/-	Granted
	Total	Rs.2,94,500/-	Rs.7,94,500/-	

15. The award of the Tribunal is modified by enhancing the compensation amount from Rs.2,94,500/- to **Rs.7,94,500/-**.

16. The respondent is directed to deposit the enhanced award amount of Rs.7,94,500/- to the credit of M.C.O.P.No.4644 of 2013 on the file of the Motor Accident Claims Tribunal/II Small Causes Court, Chennai, along with interest at the rate of 9% per annum, from the date of claim petition i.e. 21.08.2013 till the date of realisation 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 copy of this judgment.



17. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs etc., as awarded by the Tribunal, after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

18. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.

19. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently Connected Miscellaneous Petition is closed. No costs.

17.08.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

- 1.The Motor Accident Claims Tribunal/II Small Causes Court,
Chennai,
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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P.VELMURUGAN. J.

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