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CMA.No.639 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.Nos.639 of 2022

Minor Karthik
Rep. by his mother and
next friend Thenmozhi

... Appellant

-Vs-

1.V.Govindaraji
2.M/s.New India Assurance Co.Ltd.,
Gugai Branch Office,
No.7, B.K.Building,
Ramalingamadalaya Street,
Gugai, Salem 636 006.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.122 of 2018 (on the file of Special District Judge, MCOP Tribunal Salem) dated 06.10.2021.

For Appellant : Mr.S.Kaithamalai Kumaran

For R1 : No appearance

For R2 : M/s.K.Vind



CMA.No.639 of 2022

JUDGMENT

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On 14.08.2017, a certain Rajasekaran along with his wife Thenmozhi and child Karthik were traveling as passengers in a car bearing Regn.No.TN 30 BC 3561. The driver of the car was so negligent that he dashed it against the center median and the car was capsized. In the accident Rajasekaran died on the spot. His wife Thenmozhi and child Karthik suffered injuries. Thenmozhi and Karthik preferred separate claim petitions and she with other heirs of Rajasekaran filed yet another claim petition seeking compensation for the death of Rajasekaran. The present appeal arises out of MCOP.No.122 of 2018, which was filed by minor Karthik represented by his mother Thenmozhi, wherein he challenges the quantum of amount awarded to him.

2.In the accident, Karthik suffered major injury to his head and his skull was stated to have opened and though he was fortunate to live yet, he was found to have suffered 54% disability due to hemiparesis of right side. When the matter came up before this Court earlier, Karthick was directed to appear before the Medical Board and the Medical Board has



CMA.No.639 of 2022

determined his disability at 75% and has assessed his cognitive impairment at 60%. However, the advantage of the report of the medical board was not available to the Tribunal and the Tribunal determined the compensation payable at a flat Rs.10,00,000/- and did not resort to multiplier method since according to it, the boy was barely seven years old at the time of the accident.

3.This Court required the learned counsel for the appellant to make available the boy on-screen, as it does not want to bother the young boy to travel some 200+ Kilometers. The boy was presented in the virtual mode and this Court tried to interact with the boy but, it was a colossal failure as the boy did not answer even couple of formal questions put to him. Necessarily, for all practical purposes the boy in the petition lost an opportunity to live a life, which he is entitled to live but, for the accident intervened to rob him of his opportunities to live one.

4.Turning to the quantum of compensation, this Court considers that to quantify compensation payable only based on the age of the boy will be an anathema to his right of life within the meaning of Article 21 of the



CMA.No.639 of 2022

Constitution. The boy is now 13 years old and this Court is informed that he cannot even go for regular schooling and he is to be constantly cared for the rest of his life.

5.The learned counsel for the appellant also relied on the Judgment of the Hon'ble Supreme Court in ***Mallikarjun Vs.Divisional Manager, National Insurance Co. Ltd., and another*** [2013 ACJ 2445] and paragraph no.8 of the Judgment is extracted hereunder:

“It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability have not been duly taken note of. As held by this court in R.D.Hattangadi V.Pest Control(India) Pvt. Ltd., 1995 ACJ 366 (SC), while assessing non-pecuniary damages, the damages for mental and physical shock, pain and sufferings already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child,



CMA.No.639 of 2022

WEB COPY

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 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. 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.”

6. So far as the compensation payable under other conventional heads, the

Hon'ble Supreme Court has quantified the compensation amount as in



CMA.No.639 of 2022

2018 at following rates;

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<i>Head</i>	<i>Compensation amount</i>
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, etc., and loss of amenities in life on account of permanent disability	Rs.3,00,000
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation	Rs.25,000
Medical and incidental expenses during the period of hospitalization for 58 days	Rs.25,000
Future medical expenses for correction of the malunion of fracture and incidental expenses for such treatment	Rs.25,000
Total	Rs.3,75,000

7.The learned counsel for the second respondent submits that for victims who are aged below 15 years, multiplier method cannot be adopted.

8.This Court is conscious that multiplier method is not provided for anyone who suffers injuries or dies below 15 years. It is not the mistake



CMA.No.639 of 2022

of the boy that he was hit when he was below 15 years and this Court cannot let the tortfeasor take umbrage in the arguments such as that Some where down the line, this Court looks into the multiplier method only to ascertain the parameters for determining the compensation. If the statement that the multiplier method cannot be applied for victims below 15 years has to be considered, then this Court will be constrained to apply the multiplier method from and above 15 years, since this Court is hopeful that the boy will reach 15 years but, how to quantify all the sufferings that he had already undergone. If the law is insensitive to situations such as this, which is broadly underscored in the above extracted paragraph in ***Mallikarjun Vs.Divisional Manager, National Insurance Co. Ltd.***, then at least the Court has to step in to rectify to the extent possible. This Court therefore, considers it appropriate to apply the multiplier method essentially as a rational parameter for determining the compensation. To this lump sum, amount will also be added to meet the contingency for all the years below 15 years.

9.At a moderate level, even if the boy is expected to earn Rs.10,000/- when he reaches around 16 or 17 years and future career prospects of



CMA.No.639 of 2022

40% is added to it and applying a multiplier of 18, the total compensation payable will be Rs.30,24,000/-. To this, on the ground of Pain and Suffering, Rs.5,00,000/- is given, for sustained care through out life another Rs.5,00,000/- is given, for future medical expenses, if any, Rs.50,000/- is given and for discomfort and inconvenience of living without a life, another Rs.2,00,000/- is given . The break up is as follows;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	10,00,000/-	30,24,000/-	Enhanced
2.	Pain and Sufferings	1,00,000/-	5,00,000/-	Enhanced
3.	Medical expenses	9,83,759/-	9,83,759/-	Confirmed
4.	Sustained care throughout life	-	5,00,000/-	-
5.	Future medical expenses	-	50,000/-	-
6	For discomfort and inconvenience of living without a life	-	2,00,000/-	-
	Grand Total	20,83,759/-	52,57,759/-	Enhanced by 31,74,000/-

10.In fine, this Civil Miscellaneous Appeal is allowed and the



CMA.No.639 of 2022

compensation awarded by the Tribunal at Rs.20,83,759/- is hereby enhanced to Rs.52,57,759/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. Since the appellant is a minor on deposit of the sum awarded, it shall be deposited in a nationalised bank, and the next friend of the appellant is entitled to withdraw periodical interest for the upkeep of the minor. If however any need for withdrawing the sum such as for education or other compelling exigencies, the Tribunal may weigh the reasons and pass appropriate orders enabling withdrawing of the sum. It is underscored that the withdrawal of the sum should be for securing the welfare of the minor. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

01.11.2023

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CMA.No.639 of 2022

N.SESHASAYEE, J.,

Tsg

To

- 1.The Special District Judge, MCOP Tribunal Salem.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

CMA.Nos.639 of 2022



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CMA.No.639 of 2022

01.11.2023