



C.M.A. No. 3280 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3280 of 2021

Minor Rajesh

... Appellant / Petitioner

Vs.

1. S. Vijayakumar

2. United India Insurance Co. Ltd.,
No.134, Silingi Building,
Greens Road,
Chennai - 600 006.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 02.11.2019 passed in M.A.C.T.O.P. No.7135 of 2013 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellants	:	M/s. M. Malar
For R1	:	D/W
For R2	:	Mr. V. Dakshnamoorthy

JUDGMENT



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This Civil Miscellaneous appeal has been filed by the claimant challenging the Judgment and Decree passed in M.A.C.T.O.P. No.7135 of 2013, dated 02.11.2019 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai, seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. The claimant herein is a minor aged about nine years. On 11.05.2013, he was riding a bicycle from a shop to his home and he was hit by a two wheeler bearing Registration No.TN-22-CH-6796 belongs to the first respondent, who ridden the two wheeler in rash and negligent manner. Minor claimant has sustained grievous injuries on his head and all over the body. A criminal case was also registered against the rider of the two wheeler in Cr.No.655/2013 under section 279 and 337 of I.P.C. on the file of Mount Traffic investigation Police Station. For the injuries sustained, the minor claimant represented by his mother has filed this claim petition seeking compensation for a sum of Rs.2,45,000/- restricted to Rs.1,50,000/-



under section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules.

4. The first respondent is the owner cum rider of the two wheeler bearing Registration No.TN-22-CH-6796 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and denied the fact that accident was taken place due to the rash and negligent on the part of the rider of the first respondent vehicle and contended that the compensation claimed under various heads is highly excessive, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.13 were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence, placed on record, the Tribunal in point no.1, has held that accident was taken place only due to the rash and negligent riding of the two wheeler bearing Registration No.TN-22-CH-6796 by the first respondent. In point nos.2 and 3, the Tribunal has held the



claimant is entitled for compensation for a sum of Rs.57,850/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.4, the Tribunal has fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay the compensation to the claimant.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the claimant is a minor aged about nine years at the time of occurrence and he has sustained grievous head injuries i.e., right frontal SAH along with left roof of orbit fracture extending to right frontal bone, peri sylvian bleed and other multiple grievous injuries all over the body, but the Tribunal has not considered the same and not properly appreciated the evidence placed on record and fixed the disability as 10%, which is not proper. The learned counsel also submitted that the compensation awarded under various heads is on the lower side, hence prays to modify the award.



9. Per contra, the learned counsel appearing for the second respondent - insurance company has submitted that the Tribunal based on the evidence placed on record has awarded a just compensation, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. In this case, the claimant herein is a minor aged about nine years and on 11.05.2013, he has sustained grievous head injuries like right frontal SAH along with left roof of orbit fracture extending to right frontal bone, peri sylvian bleed and other multiple grievous injuries, which leads to haemorrhage on the sub arachnoid. He was also subjected to treatment in the Institute of Neurology, the disability of the deceased was assessed by the P.W.2 - Doctor, who was the retired surgeon of the Government Hospital and he has also stated that on his examination, he has noted the above injuries and these injuries have resulted in causing severe complications such as post traumatic head ache, hence, he was not able to study and concentrate, accordingly, he has assessed the disability as 30% partial



permanent disability.

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12. The Tribunal after assessing the evidence of P.W.2 and the disability certificate - Ex.P.12, has held that the certificate is not issued as per the Rule 4 of "The persons with Disability (Equal opportunities Protection of Rights and Full Participation) Act.1195 and its Rules 1996". Further the Ex.P.12 is not accompanied with the mode of assessment/ worksheet as stipulated in the "Guidelines & Gazette Notification Regd. No. DL 33004/99 (Extraordinary) Part II. Sec.1 June, 13,2001 issued by the Social Justice & Empowerment, GOI", hence, by considering the nature of injuries, the Tribunal has fixed the disability as 10% and by adopting percentage method granted compensation of Rs.30,000/- by fixing Rs.3,000/- per percentage of injury.

13. P.W.2 has categorically deposed that the injuries sustained by the claimant more particularly on the face and the head has resulted in fracture near the right frontal SAH along with left roof of orbit fracture extending to right frontal bone, peri sylvian bleed, which leads to haemorrhage on the sub arachnoid. These injuries caused to the young boy



are serious injuries. The Hon'ble Apex Court in judgment ***Master***

Mallikarjun vs. Divisional Manager, the National Insurance Company

Limited and another reported in [CDJ 2013 SC 740] has laid down the

dictum for the assessment of quantum of compensation to be fixed for the

minor children in paragraph no.12 as follows:

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

14. In this case, the P.W.2, the doctor who assessed the disability of 30% but the Tribunal has fixed the percentage of disability as 10%. As per the Hon'ble Apex Court judgment cited supra, the quantum of compensation fixed for the disability falls between 10% to 30% is Rs.3,00,000/-. In this case, the Tribunal has fixed the percentage of disability as 10% and this Court is of the view that the nature of the injuries sustained by the claimant that too on the face of the young boy, which also



resulted in causing fracture in the head region, reducing the percentage of disability is not proper. However, reduction or accepting the percentage of disability in this case has no effect on the quantum of compensation to be paid to the claimant herein. Accordingly, the compensation to be awarded is Rs.3,00,000/- and this Court modifies the compensation awarded by the Tribunal under the head disability and fix the same as Rs.3,00,000/-.

15. The above compensation granted for Rs.3,00,000/- includes pain and suffering, extra nourishment, loss of amenities, hence the compensation awarded by the Tribunal under the heads pain and suffering, extra nourishment and loss of amenities are hereby removed. Whereas the compensation awarded by the Tribunal under the heads attender charges, medical expenses, damages to cloths and transportation charges are hereby confirmed. Even the claimant has claimed lesser amount has compensation, he is entitled for just compensation, if the claimant has establish his case for enhancement of compensation.

16. Even though the claimant has claimed Rs.1,50,000/- as compensation, granting compensation amount exceeding the claim amount is permissible, and the judgment in *Sidram vs. The Divisional Manager*,



United India Insurance [Manu/SC/1493/2022 : 2023 (3) SCC 439], the

Hon'ble Apex Court has reiterated the same by following the judgment of

Apex Court in *Nagappa vs. Gurudayal Singh [2023 (2) SCC 274]* and

Laxman Maurya vs. Oriental Insurance Company Limited [2012 ACJ

191].

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability	30,000/-	3,00,000/-	Enhanced
2.	Pain and Suffering	10,000/-	---	Rejected
3.	Extra Nourishment	2,000/-	---	Rejected
4.	Transportation	2,000/-	2,000/-	Confirmed
5.	Damages to cloths	1,000/-	1,000/-	Confirmed
6.	Attender charges	2,000/-	2,000/-	Confirmed
7.	Medical expenses	850/-	850/-	Confirmed
8.	Loss of amenities	10,000/-	---	Rejected
	Compensation Awarded	57,850/-	3,05,850/-	Enhanced



18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.57,850/- is hereby enhanced to **Rs.3,05,850/- [Rupees Three Lakh Five Thousand Eight Hundred and Fifty only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.7135 of 2013 on the file of the VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The VI Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.

K. RAJASEKAR, J.

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