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C.M.A.No.1401 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1401 of 2023

Pavan Kumar (Minor)

Rep. by M.N.F.Venkatamma

.... Appellant

Versus

1.P.Amaravathy

2.The Shri Ram General Insurance Co.Ltd.,
Mookambika Complex 2nd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

..... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 05.02.2019 passed in M.C.O.P.No.6766 of 2014 by the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For appellant : Ms.A.Subadra
for Mr.M.Pachaiyappan

For R2 : Ms.R.Sreevidhya

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal in M.C.O.P.No.6766 of 2014, dated 05.02.2019.



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2.The appellant had filed the claim petition stating that on 25.09.2012 at about 11:30 hours, while he was traveling in a tractor, the lorry, insured with the 2nd respondent came in a rash and negligent manner, dashed against the tractor; that as a result of which, the appellant was thrown out of the vehicle and sustained grievous injuries all over his body and thus, he was entitled to compensation.

3.The 1st respondent filed a counter stating that the lorry was duly insured with the 2nd respondent and hence, the 2nd respondent is liable to pay the compensation.

4.The 2nd respondent resisted the claim petition stating that the accident occurred only due to the negligence of the driver of the tractor by allowing a minor to travel in the tractor; that the driver of the lorry insured with the 2nd respondent did not possess valid driving license and that in any case, the compensation claimed was excessive and hence, prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined P.W.1 to P.W.3 and marked Exs.P1 to P11 on his side. The 2nd respondent did not examine



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any witness or filed any document on their side.

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6.The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to the negligence of the driver of the lorry and directed the respondents to pay a compensation of Rs.13,31,000/- to the appellant, jointly and severally.

7.The learned counsel appearing for the appellant submitted that, in view of the serious injuries suffered by the appellant, the Tribunal should have assessed the functional disability more than 50%. The appellant was examined by two Doctors P.W.2 and P.W.3 and they had issued disability certificates, which were marked as Exs.P10 & P11. P.W.2 had issued the disability certificate showing that the appellant had suffered 50% ortho disability and P.W.3 had issued disability certificate stating that the appellant had suffered 40% permanent disability in his right eye i.e., loss of vision. The learned counsel for the appellant further submitted that the notional income taken by the Tribunal is meagre and the compensation awarded by the under the head Attender Charges is also meagre and hence, prayed for enhancement of compensation.



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8.The learned counsel for the appellant submitted that the 1st respondent may not be a necessary party and he prayed to dispense with notice to the 1st respondent and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent per contra submitted that the appellant is a minor and as such the notional income fixed by the Tribunal is excessive; that the Tribunal after assessing the disability certificate issued by the private doctors has rightly come to the conclusion that the appellant had suffered 50% of functional disability; that hence, no interference is called for and prayed for dismissal of the appeal.

10.The questions involved in the instant appeal are:

- a) Whether the Tribunal was right in fixing 50% functional disability for the appellant?
- b) Whether the compensation awarded by the Tribunal is just and reasonable?



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11. On perusal of the records, this Court finds that the appellant was examined by two Doctors viz., P.W.2 and P.W.3. P.W.2 is an Orthopaedic Surgeon, who assessed the disability at 50%, which is partial permanent disability. P.W.3 is an Ophthalmologist eye surgeon, who examined the appellant and assessed 40% permanent disability. It is found from the records that the appellant was not examined by the Medical Board. Considering the injuries suffered by the appellant as revealed from Ex.P3 and Ex.P4-discharge summaries, issued by the hospital and disability certificates issued by P.W.2 and P.W.3, which were marked as Ex.P10 and Ex.P11, this Court is of the view that, the finding of the Tribunal in fixing 50% functional disability on the appellant is just and reasonable and no interference is called for. However, considering the year of accident and the age of the victim, this Court is of the view that the notional income of Rs.8,000/- can be fixed for the purpose of computing the loss of earning capacity. The appellant is entitled to 40% enhancement towards future prospects and the applicable multiplier is 18. Thus, the compensation under the head Loss of earning capacity has to be as follows:-

$$\text{Rs.11,200/-} - (\text{Rs.8,000} + 40\%) \times 12 \times 18 \times 50/100 = \text{Rs.12,09,600/-}$$



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Considering the period of treatment taken by the appellant, the compensation under the head Attender Charges is enhanced to Rs.20,000/-. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Towards Transportation and nourishing food	50,000	50,000	Confirmed
2.	Attender Charges	12,000	20,000	Enhanced
3.	Medical Expenses	10,000	10,000	Confirmed
4.	Loss of Earning Capacity	10,58,400	12,09,600	Confirmed
5.	Damages for Pain, Suffering and Trauma	1,00,000	1,00,000	Confirmed
6.	Loss of Amenities	1,00,000	1,00,000	Confirmed
	Total	13,30,400 rounded off to 13,31,000	14,89,000	Enhanced by Rs.1,58,600/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.13,31,000/- is hereby enhanced to Rs.14,89,000/- 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 2nd respondent 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 receipt of a copy of this Judgment. On such deposit, since the appellant is minor, the entire awarded amount is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The guardian of the appellant is permitted to withdraw the accrued interest once in three months. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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vca/rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
IV Court of Small Causes, Chennai.

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



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SUNDER MOHAN, J.

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