



C.M.A.No.4183 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.4183 of 2019

and

C.M.P.No.18671 of 2019

Minor R.Akilesh

... Appellant / Petitioner

Vs.

1.R.Shoba

[since R1 remained exparte before the Tribunal,
her presence may be dispensed with]

2.United India Insurance Company Limited,

No.73, C.M.T.H.Road,

Ambattur,

Thiruvallur – 600 053.

... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2018 made in M.A.C.T.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for M/s.M.Malar



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For Respondents : Exparte [R1]
Mr.M.J.Vijayaraaghavan [R2]

JUDGEMENT

The claimant has filed the above appeal seeking an enhancement of the award granted by the Motor Accident Claims Tribunal, Special Sub Court No.2, Motor Accidents Claims Petitions, Small Causes Court, Chennai in M.A.C.T.O.P.No.1094 of 2016, dated 27.11.2018.

2. On 24.12.2015 at about 4.30 p.m., while the minor petitioner was standing in front of his house, the motorcycle bearing Reg.No.TN 02 AW 8425 driven by its driver in a rash and negligent manner, in which the minor petitioner sustained grievous injuries including fracture, for which, he was admitted in the hospital and took treatment. Therefore, the minor claimant filed a claim petition claiming a sum of Rs.13,00,000/- before the Tribunal for the injuries sustained by him.

3. Before the Tribunal, the claimant examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. No



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witnesses were examined nor any documents were marked on the side of the respondents. On considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.3,00,000/- as compensation to the claimant. Not satisfied with the same, the present appeal has been preferred by the claimant.

4. The learned counsel appearing for the appellant submitted that the injuries suffered by the minor appellant are permanent, which has lasting impact on the day-to-day life of the minor appellant. He also submitted that P.W.2/doctor through Ex.P.9 has fixed partial permanent disability of 30%, however, erroneously, without considering the nature of the injuries and disability, the Tribunal has reduced the same to 20%, which is wholly erroneous. Further, relying on the decision of the Apex Court in the case of ***Kishan Gopal & Ors. Vs. Lala & Ors.***, the quantum of compensation is grossly inadequate. Therefore, he seeks enhancement of the same.



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5. Per contra, the learned counsel appearing on behalf of the second respondent/insurance company submitted that the appellant/claimant was aged about only two years at the time of accident and the quantum of compensation determined by the Tribunal at Rs.3,00,000/- is just and reasonable for the injuries sustained by the claimant as the doctor/P.W.2 had only assessed the disability as partial permanent in nature and therefore, taking the disability at 20% as permanent in nature, the Tribunal has awarded compensation, which does not require any interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The accident is not disputed and so also the injuries sustained by the claimant. The only issue which is disputed is the percentage of disability and the nature of disability suffered by the claimant. In view of the fact that the claimant was aged two years at the time of accident, this Court in order to find the exact percentage of disability, which the



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claimant had suffered taught it fit to refer the claimant to the Medical Board for its opinion, so that the percentage of disability has to be as on date, which the disability had lost the life of the claimant. Pursuant to which, the medical board assessed the physical disability at 42% and functional disability also at 42%. The accident had occurred in the year 2015, at which point of time, the claimant was aged about two years and by now, the claimant is aged about ten years. Considering the fact that the disability suffered by the claimant is beyond 42% and the nature of injuries suffered has a lasting impact on the day-to-day activities of the claimant, though it is difficult to have accurate assessment of the compensation which could be given in respect of the disability suffered by the claimant, this Court by relying upon the decision of the Apex Court in the case of ***Kishan Gopal & Ors. Vs. Lala & Ors.*** reported in ***MANU/SC/0864/2013***, a lumpsum compensation of Rs.5,00,000/- could be fixed as compensation to the claimant.

8. Accordingly, the Civil Miscellaneous Appeal is allowed in part and the impugned award of the Tribunal is modified, enhancing the



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compensation from **Rs.3,00,000/-** to **Rs.5,00,000/-**. The second respondent/insurance company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.1094 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to deposit the same in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until he attains majority and interest derived from out of the said deposit shall be paid to the mother/Charumathi of the claimant every quarter to be utilised for the welfare of the said minor claimant. After attaining majority, it is open to the claimant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. The claimant is directed to pay the necessary Court fee for the enhanced compensation



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amount, if required. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions), Small Causes Court, Chennai.

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



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M.DHANDAPANI, J.,

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