



C.M.A.No.1457 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1457 of 2021

Minor Gopinath
Represented by his father Kumar,
Komalli Vattam, Kallarpatti Village,
Narasingapuram Post, Vayiyambadi Taluk,
Vellore District.

... Appellant/Claimant

Vs.

1. P. Samikannu
[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

2. The New India Assurance Company Limited,
Third Party Claims HUB,
No.1, CSI Building 2nd Floor,
Vellore

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 04.02.2020 made in M.C.O.P.No.147 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Vaniyambadi.

For Appellant	:	Ms. M. Malar
For R1	:	Ex-parte
For R2	:	Mr. P. Kandasamy



C.M.A.No.1457 of 2021

JUDGMENT

WEB COPY

The Civil Miscellaneous Appeal has been filed by the minor claimant challenging the Award passed in M.C.O.P.No.147 of 2018, dated 04.02.2020, on the file of the Motor Accidents Claims Tribunal, Sub Judge, Vaniyambadi, for enhancement of compensation.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. The case of the claimant is that on 07.06.2016 at about 11.45 a.m., while the petitioner was walking on the left hand side of the road on Alangayam to Kavalur Main Road, at Kalarapatti Village, near Komali Eari at Komali Vattam, a two-wheeler bearing Registration No.TN 23 BW 4813 was driven by its driver- first respondent, in in rash and negligent manner, dashed against the petitioner which resulted in causing grievous injuries to the petitioner. Immediately, he was taken to the Government Hospital, Vaniyambadi and undergone treatment. A criminal case was registered in Crime No.124 of 2016, under Sections 279 and 337 of IPC against the driver of the two-wheeler, on the file of the Alangayam Police Station. Hence, the



C.M.A.No.1457 of 2021

petitioner filed Claim Petition, claiming compensation of Rs.10,00,000/- for the injuries sustained by him.

4. The first respondent who is the owner of the two-wheeler was remained ex-parte before the Tribunal. The second respondent is the insurer filed counter and contended that the minor petitioner was playing in road and suddenly crossed the road without any sense caused the accident and hence, he is responsible for the accident. The two-wheeler involved in the accident has violated the terms and condition of the policy. Hence, the insurer is not liable to pay any compensation and prays to dismiss the claim.

5. Before the Tribunal, the on the side of the petitioner P.W.1 was examined and Exs.P1 to P10 were marked. The Report of the Medical Board was marked as Ex.C1. On the side of the second respondent no oral and documentary evidence marked.

6. The Tribunal based on the evidence placed on record, in Point No.1 has held that the negligent act of the rider of the two-wheeler is responsible for causing the injuries to the petitioner and the Tribunal has



C.M.A.No.1457 of 2021

quantified the compensation and awarded a sum of Rs.1,48,350/- as compensation payable to the petitioner along with interest at the rate of 6% per annum from the date of filing of claim petition till the date of realisation.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the minor claimant has approached this Court seeking enhancement of compensation.

8. The learned counsel for the appellant/claimant has submitted that the claimant was aged about 7 years at the time of accident and due to the accident, he was suffered 10% disability as assessed by the Medical Board and the Tribunal has not properly awarded compensation and the compensation awarded under various heads are also on the lower side. Hence prays to enhance the compensation. In support of her contention she has also relied on the Judgment of the Hon'ble Apex Court in ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and Another [2014 (14) SCC 396]***.

9. The learned counsel for the second respondent-Insurance



Company has submitted that the Tribunal after assessing the Disability of the Medical Board-Ex.C1, awarded Rs.3,000/- per percentage of injury and the same is in accordance with the norms followed by this Court. The Tribunal has also awarded just compensation under various heads hence prays to dismiss the appeal.

10. I have considered the rival submissions made on both sides and also perused the records available on record.

11. On perusal of the Medical Records-Ex-P2, Ex.P6 and Ex.P8 marked before the Tribunal shows that the claimant has sustained grievous injuries and was originally taken treatment at Government Hospital, Ambur. Ex.P6 shows that he is a minor was aged about 7 years and sustained fracture on the shaft of right femur and was fixed 'T' plates and external nails. Ex.P8 shows that he has continued further treatment. Ex.C1 shows that the Medical Board assessed the disability of the minor and fixed the disability as 10%. The medical records shows that the injury sustained by him is a complicated injury i.e., shaft of femur and he has undergone surgery twice at the age of 7 years. The Tribunal based on Ex.C1 awarded



Rs.3,000/- per percentage of injury and granted a sum of Rs.30,000/- as compensation under the head Disability. The Tribunal has also awarded Rs.30,000/- under the head of 'Pain and Sufferings' and a sum of Rs.3,000/- for 'Loss of Amenities'.

12. The Hon'ble Apex Court in ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and Another [AIR 2014 SC 736 : 2014 (14) SCC 396]*** has held that the child/injured shall not be equated to such a non-earning person and 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. In paragraph No.8 of the Judgment, the Hon'ble Apex Court has held as follows:

“8. While considering the claim by a victim child, 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



WEB COPY



C.M.A.No.1457 of 2021

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. The 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.”

13. After observing the importance of assessment of compensation for children suffering disability on account of Motor Vehicle Accident which is briefly discussed in Paragraph No.12, the Hon'ble Apex Court has given guidelines for awarding lump sum compensation for the injuries sustained by the child. It is held that if the child / victim suffered 10% permanent disability, the compensation should be Rs.1,00,000/-.

14. In this case in hand, the injured has sustained fracture of Shaft of femur in right leg which is a complicated injury and he has also undergone surgery in twice and suffered huge pain and the Medical Board has assessed the disability as 10% of permanent disability. Hence this Court is of the view that as observed by the Hon'ble Apex Court in **Master**



C.M.A.No.1457 of 2021

Mallikarjun vs. Divisional Manager, The National Insurance Company

Limited and Others cited above, the lump sum amount of Rs.1,00,00/- shall be payable for the disability to the extent of 10% sustained by the claimant herein. Accordingly, the compensation awarded by the Tribunal under the head 'Disability' is hereby modified and this Court awards a sum of Rs.1,00,000/- under the head 'Disability'. The Hon'ble Apex Court has further clarified that, this lumpsum payment shall include, Pain and Sufferings, Attender Charges, Hardship, Discomfort, Inconvenience and Loss of Amenities. Accordingly, the compensation awarded separately under the head Pain and Sufferings and Loss of Amenities is cancelled. The Tribunal has awarded a sum of Rs.3,000/- under the head Extra Nourishment and this Court is inclined to enhance the same by Rs.15,000/-. As far as the compensation awarded under other heads are concerned, the same is hereby confirmed. The rate of interest awarded by the Tribunal at 6% per annum is modified to 7.5% per annum from the date of filing of claim petition till the date of deposit as per the judgment of the Hon'ble Apex Court in ***Dharmpal and Others vs. U.P State Road Transport Corporation [2008 (12) SCC 208]***, taking note of the prevailing rate of interest on bank deposits and enhanced the rate of interest according to 7.5%



C.M.A.No.1457 of 2021

from 6% per annum which was awarded by the Tribunal.

WEB COPY

15. Thus the compensation awarded 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 granted or reduced
1.	Disability/Pain and Suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomforts etc and loss of amenities in life	Rs.30,000/-	Rs.1,00,000/-	Enhanced
2.	Pain and Sufferings	Rs.30,000/-	---	Included in Serial No.1
3.	For Loss of Amenities	Rs.3,000/-	---	Included in Serial No.1
4.	For Extra Nourishment	Rs.3,000/-	Rs.15,000/-	Enhanced
5.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.65,350/-	Rs.65,350/-	Confirmed
7.	Transport Expenses	Rs.7,000/-	Rs.7,000/-	Confirmed
	Total	Rs.1,48,350/-	Rs.1,97,350/-	Enhanced by Rs.49,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,48,350/- is hereby enhanced to Rs.1,97,350/- [Rupees One Lakh Ninety Seven Thousand Three Hundred and Fifty only] together with interest at the rate of



C.M.A.No.1457 of 2021

7.5% per annum from the date of claim 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.147 of 2018, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Vaniyambadi. Since the claimant is a minor, the compensation amount is directed to be deposited in any one of the Nationalized Bank till the minor appellant/claimant attains majority. On such deposit, the father of the minor appellant/claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

16.10.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:



C.M.A.No.1457 of 2021

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vaniyambadi.

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

K.RAJASEKAR,J.

ssi



WEB COPY



C.M.A.No.1457 of 2021

C.M.A.No.1457 of 2021

16.10.2023