



WEB COPY



C.M.A.No.3721 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3721 of 2019

K.Goutham (minor)

Rep. by mother Tamil Arasi @ Tamil

...Appellant

Vs.

1. K.Pari Anand

(R1 remained exparte before the Tribunal hence his presence may be dispensed with.)

2. The Oriental Insurance Co. Ltd.,
No.8, Esplanade,
Chennai – 600 108.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.09.2008 made in M.A.C.T.O.P.No.738 of 2005 on the file of the Motor Accident Claims Tribunal and V Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.M.J.Vijayaraghavan, for R2



C.M.A.No.3721 of 2019

WEB COPY

JUDGEMENT

Aggrieved by the judgment and decree passed by the Motor Accident Claims Tribunal and V Court of Small Causes, Chennai in M.A.C.T.O.P.No.738 of 2005 dated 25.09.2008, the claimant has come up with this Appeal.

2. The case of the Appellant is that, on 22.12.2004 at about 11.00 hours, when the minor appellant was crossing the road in Ranipet via Muthukadai to Arcot, a motor cycle bearing Regn.No.TN-02-B-7790, owned by the 1st respondent insured with the 2nd respondent driven by its driver in a rash and negligent manner, dashed against the minor appellant, as a result of which, the appellant sustained grievous injuries all over his body. Thereby, he filed a claim petition claiming a compensation of Rs.1,00,000/-, After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.82,000/-. Aggrieved by the said order, the claimant has come up with this appeal seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the Appellant submitted that, the above said



C.M.A.No.3721 of 2019

WEB COPY

accident happened solely due to the rash and negligent driving of the rider of the 1st respondent motor cycle and at the time of accident, the appellant was aged about 11 years and due to the the above said accident he sustained 45% disability and without the assistance of his mother, he is unable to lead his life in a normal manner. However, the tirbunal, without considering any of the said facts, had awarded only a sum of Rs.45,000/- under the head “Permanent disability” which is very meagre and the compensation awarded under other heads are also on the lower side and the same has to necessarily be enhanced.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

5. Heard the learned counsel for the Appellant and the learned counsel appearing on behalf of the 2nd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the



C.M.A.No.3721 of 2019

parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. It is claimed by the Appellant that, at the time of accident, the minor appellant was aged about 11 years and due to the injuries sustained by him at the time of accident, he is unable to lead his life normally and he sustained 45% permanent disability. However, the tribunal had awarded a meagre compensation and failed to adopt multiplier method for awarding compensation under the head “Permanent disability“, which is wholly erroneous.

7. Though the learned counsel for the appellant claim that the disability sustained by the appellant is permanent in nature and that the adoption of percentage method instead of multiplier method by the tribunal is erroneous, however, the said contention cannot be accepted for the reasons that the extent of the disability would not really hamper the appellant/claimant from discharging his work. Therefore, considering the said fact that the Tribunal had adopted percentage method and arrived at the compensation and the procedure adopted by the Tribunal cannot be



C.M.A.No.3721 of 2019

WEB COPY

found fault with and this Court in agreement with the adoption of percentage method. Accordingly, the said compensation is confirmed.

8. Further, it is pertinent to note that, the accident is of the year 2004 and as per the existing law at the relevant point of time, a sum of Rs.1,000/- per percentage of disability has to be adopted, and the tribunal had rightly adopted Rs.1,000/- per percentage of disability and awarded a compensation of Rs.45,000/- ($45\% * 1000 = 45,000/-$) under the head “Permanent Disability” which cannot be said to be erroneous and accordingly, the said compensation awarded by tribunal is also confirmed.

9. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are also just and reasonable and no interference is warranted with the award of compensation under the said heads.



C.M.A.No.3721 of 2019

WEB COPY

10. Further, it is pertinent to note that, when the claim petition was filed in the year 2005, the appellant was minor, aged about 12 years and now, the appellant would have attained majority. Though no application has been taken out to declare the appellant as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellant as major and discharges his guardian M/s.Tamil Arasi from the guardianship. The Registry shall carry out the necessary amendments.

11. For the reasons aforesaid, this Appeal stands dismissed, confirming the impugned award passed by the Tribunal. The 2nd respondent-insurance company is directed to deposit the compensation awarded by the Tribunal to the credit of M.A.C.T.O.P.No.738 of 2005 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 two weeks (2) from the date of receipt of a copy of this judgment. On such deposit



C.M.A.No.3721 of 2019

WEB COPY

being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

16.11.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal and V Court of Small Causes,
Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



C.M.A.No.3721 of 2019

M.DHANDAPANI, J.

skt

C.M.A.No.3721 of 2019

16.11.2023