



CMA.No.760 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.760 of 2020

Minor Johan

Rep. By Father and Natural Guardian Ramesh

...Appellant

Vs.

1. Angayarkanni (Given up)

2. The Oriental Insurance Co. Ltd.,
3217 East Main Road,
Pudukottai – 622 001.

3. S.Selvarajan (Given up)

4. The New India Assurance Co. Ltd.,
Chennai.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2009 passed in M.C.O.P.No.33 of 2007 by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.V.Anand

For Respondents : Ms.R.Sreevidhya, for R2
: R1 & R3 – Given up
: No Appearance, for R4



CMA.No.760 of 2020

JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed challenging the judgment and decree passed in M.C.O.P.No.33 of 2007 dated 21.12.2009 by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2. The case of the appellant is that, on 13.01.2006 at about 04.30 am., when the appellant along with other persons were travelling in a Indica car bearing Regn.No.TN-10-M-7677 owned by the 3rd respondent insured with the 4th respondent, a Tourist bus bearing Regn.No.TN-02-Q-7797, owned by the 1st respondent insured with the 2nd respondent, driven by its driver in a rash and negligent manner which came in the opposite direction dashed against the above said car in which the appellant was traveling, as a result of which one Selvakumar died on spot and the appellant and other occupants of the car sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition, claiming a compensation of Rs.25,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.3,36,000/-. Aggrieved by the said order, the claimant had preferred this appeal seeking enhancement of compensation.



WEB COPY

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent bus, due to which the appellant sustained grievous injuries all over his body and at the time of accident, the appellant was only aged about 7 years and due to the injuries sustained by him, he is suffering from 90% permanent disability and the same is evident from the depositions of the Doctors who have examined the appellant, however, without considering the same, the tribunal instead of adopting multiplier method, had awarded a sum of Rs.90,000/- under the head Disability, which is very meagre. Further, the compensation awarded by the tribunal under other heads are also on the lower side and the same has to 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, she prayed for dismissal of the appeal.

5. Heard counsel for the appellant as well as the 2nd respondent and perused the materials placed on record.



6. The factum and manner of the accident is not disputed by the 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 by the tribunal. It is the claim of the appellant that, at the time of the appellant was aged about only 7 years and due to the injuries sustained by him, he suffered 90% permanent disability and the appellant got mental disorders and in order to prove the same, the P.W.4 and P.W.5, Doctors who have examined and treated the appellant were examined before the tribunal, who have clearly deposed the nature of injuries sustained by the appellant and that, the appellant sustained 92.06% disability and issued Disability certificate Ex.P.33 to that effect, however, the tribunal had awarded only a sum of Rs.90,000/- under the head Disability, which is very meagre.

7. A perusal of the impugned award, particularly the Disability certificate makes it clear, due to the above accident, the appellant lost his memory and is unable to perform his day to day duties without the help of others and he almost went to vegetative state and thereby, considering the nature of injuries sustained by the appellant, the tribunal ought to have



CMA.No.760 of 2020

adopted the multiplier method, since the disability sustained by the appellant is functional in nature and that the extent of the disability would really hamper the appellant from discharging his work, however, as the tribunal failed to adopt multiplier method for awarding compensation, this Court is inclined to interfere with the impugned award.

8. Considering the fact that the disability suffered by the claimant is beyond 90% 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*, fixes the notional income of the appellant as Rs.40,000/- per annum and the appellant being aged about 7 years at the time of accident, as evidenced from the records, adopting the multiplier of 15, the loss of earning due to disability is arrived at Rs.40,000/- * 15 = **Rs.6,00,000/-**.



CMA.No.760 of 2020

9. Further, the Tribunal has not awarded compensation towards Transportation charges and Future medical expenses, therefore, this Court awards a sum of Rs.50,000/- under each head. The Tribunal has awarded a sum of Rs.10,000/-each under the heads Pain and suffering and extra nourishment respectively, which is on lower side and the same has to be enhanced.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Disability	90,000/-	6,00,000/- (enhanced)
2	Medical expenses	2,26,000/-	2,26,000/-
3	Pain and sufferings	10,000/-	50,000/- (enhanced)
4	Extra nourishment	10,000/-	50,000/- (enhanced)
5	Future medical Expenses	-	50,000/- (Granted)
6	Transportation charges	-	50,000/- (Granted)
	Total	3,36,000/-	10,26,000/-



CMA.No.760 of 2020

WEB COPY

11. Further, it is pertinent to note that, when the claim petition was filed in the year 2007, the appellant was minor, aged about 7 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 Mr.Ramesh from the guardianship. The Registry shall carry out the necessary amendments.

12. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.3,36,000/-** to **Rs.10,26,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.33 of 2007 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



CMA.No.760 of 2020

deposit being made by the 2nd respondent/Insurance Company, the Tribunal is directed to transfer the award amount directly to the bank of the appellant/claimant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant/claimant. There shall be no order as to costs in the present appeal.

27.11.2023

skt

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

Copy to:

1. The Motor Accident Claims Tribunal, Principal District Judge, Perambalur.
2. The Section Officer,
VR Section, Madras High Court.



WEB COPY



CMA.No.760 of 2020

M.DHANDAPANI., J.

skt

CMA.No.760 of 2020

27.11.2023