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CMA.No.2271 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No.2271 of 2018

Minor Karthik

Minor represented by Next Friend and Father Govindan

Sembadamuthur Village & District, Krishnagiri Taluk & District. .. Appellant

Versus

1.R. Murugesan

2.The Branch Director,

National Insurance Company Limited, Gobichettipalayam, Erode.

.. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.08.2010 made in M.C.O.P.No.409 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.P.Dinesh Kumar

For Respondents : Mr. D.Baskaran for R2, No appearance for R1

JUDGMENT

The present appeal is filed by the claimant, questioning the correctness of the award dated 11.08.2010 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri) in M.C.O.P.No.409 of 2007.

2.As per the claim petition, on 08.06.2005 at about 17.45



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hours, the son of the claimant, who was a minor by then, was walking on the road in front of Bharatha kovil at Sembadamauthur. At that time, the driver of the DCM Mini Lorry bearing registration Number TN 57 X-18688 owned by the first respondent and insured with the second respondent, driven it in a rash and negligent manner and hit the minor. Due to the impact, the minor claimant suffered grievous injuries which are more fully set out in column number 11 of the claim petition. According to the claimant, due to the injuries sustained in the accident, his son (minor) was admitted in the hospital from 08.06.2005 to 15.07.2005. As a result of the accident, the injured minor could not do his normal chores, unable to sit, stand or walk freely and this has dented his prospects of earning. Therefore he has filed this claim petition, claiming a total compensation of Rs.12,86,200/-, but restricted it to Rs.6,00,000/-.

3.The claim petition was contested by the second respondent/Insurance Company. According to the Insurance Company, the accident has not occurred in the manner as projected in the claim petition. The Insurance Company also denied the nature of injuries stated said to have been suffered by the minor/ injured. The compensation claimed on behalf of the minor is onerous. In any event, the minor claimant, after the accident, has recovered fully and therefore



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the question of compensation for disability will not arise. Accordingly, the insurance company prayed for the dismissal of the claim petition.

4. Before the Tribunal, on behalf of the claimant, the father of the minor/claimant examined himself as P.W.1 and Doctor D.V.Gandhi, was examined as P.W.2. Exs.P.1 to P.11 were marked on behalf of the claimant. On behalf of the respondent in the claim petition, no oral or documentary evidence was marked.

5. The Tribunal on appreciation of the material evidence, concluded that the accident had occurred due to the rash and negligent driving by the driver of the DCM Mini Lorry owned by the first respondent. For this purpose, Tribunal relied on the First Information Report, Ex.P.1, which was registered as against the driver of the lorry. As regard the liability of the insurance company, the Tribunal concluded that the Doctor has opined that due to the injuries, the minor/injured could not sit, stand or squat and he will be having difficulty in future. He has assessed the disability of the injured as 60% under Ex.P.5. However the Tribunal, taken the disability only at 50% on the ground that the Doctor/P.W.2 did not treat the injured/minor. For 50% of the disability,



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the Tribunal awarded a sum of Rs.1,00,000/- towards disablement. For pain and suffering, the Tribunal awarded 30,000/-. In all, a total sum of Rs.1,68,170/- was awarded as compensation.

6. As against the award passed by the Tribunal, the Insurance Company has not preferred any appeal. This appeal has been filed only by the claimant seeking enhancement.

7. The learned counsel for the appellant vehemently contended that the compensation awarded by the Tribunal is not befitting the nature of injuries suffered by the claimant. As per the Doctor/P.W.2, the disability was assessed at 60%. However, the Tribunal without any basis, had discarded the evidence of the Doctor and assessed the disability only at 50%. The amount awarded under the pain and suffering for the injuries suffered by the minor is very low. The Tribunal has not awarded any amount towards extra nourishment or attender charges. In all the Tribunal awarded a compensation which is disproportionate to the nature of injuries suffered by the claimant. Accordingly, the learned counsel for the appellant prayed for enhancement.



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8. The learned counsel appearing for the Insurance Company would only submit that the accident had occurred in the year 2005. The compensation was awarded towards disability at the rate of Rs.2000/- per percentage. The amount awarded towards non pecuniary heads are also fair and reasonable and therefore, he prayed for the dismissal of the appeal.

9. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent insurance company and perused the material placed on record.

10. The accident is admitted and it is not disputed. The minor/injured suffered grievous injuries for which he was admitted in hospital for at least a month soon after the accident and thereafter it is stated that he had taken treatment at private hospital as well. The Doctor/P.W.2 assessed the disability at 60%. The Tribunal taking note of the overall facts and circumstances, has rightly assessed the disability at 50% and awarded a sum of Rs.1,00,000/- disability. This in the opinion of this Court needs no interference. However for pain and suffering, the



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Tribunal has awarded a sum of Rs.30,000/-. Admittedly, the injured was a minor aged 10 years at the time of accident. The injuries suffered are grievous in nature. The pain and suffering that would have undergone by the minor would be severe and it has to be adequately compensated. Accordingly, this Court feels that, awarding a sum of Rs.40,000/-, as against Rs.30,000/- awarded, towards pain and suffering would meet the ends of justice.

11. The medical expenses incurred by the claimant at Rs.28,170/- have been awarded by the Tribunal and they are based on medical bills. On this ground, this Court finds no reason to enhance the compensation.

12. The Tribunal awarded a sum of Rs.10,000/- towards transport and extra nourishment. Taking note of the fact that the victim was a minor aged 10 years at the time of accident, this Court feels that the compensation awarded by the Tribunal is required to be scaled up. Accordingly, a sum of Rs.10,000/- is awarded towards transportation and another sum of Rs.10,000/- is awarded towards extra nourishment.



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13. For attender charges and future medical expenses, the Tribunal did not award any compensation. Here again taking note of the age of the minor victim, particularly the injuries suffered by him in right thigh, leg, right knee and upper leg, this Court feels that awarding a sum of Rs.10,000/- towards attender charges and another sum of Rs.10,000/- towards future medical expenses would meet the ends of justice.

In the light of the above discussion, the award of the Claims 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.	Compensation for his 50% of disablement (50 x 2000)	1,00,000/-	1,00,000/-	Confirmed
2.	Pain and Suffering	30,000/-	40,000/-	Enhanced
3.	Medical Bills	28,170/-	28,170/-	Confirmed
4.	Transportation	10,000/-	-	Set aside



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S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	and Extra Nourishment			
5.	Transport Expenses	-	10,000/-	Granted
6.	Extra Nourishment	-	10,000/-	Granted
7.	Attender Charges	-	10,000/-	Granted
8.	Future Medical Expenses	-	10,000/-	Granted
	Total	Rs.1,68,1 70/-	Rs.2,08,17 0/-	Rs.40,000/- Enhanced

14. In the result the compensation awarded by the Tribunal is modified and a total sum of Rs.2,08,170/- is awarded as compensation. The second respondent insurance company is directed to deposit the enhanced compensation amount to the credit of M.C.O.P.No.409 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri, within a period of eight



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weeks from the date of receipt of copy of this order with interest at the rate of 7.5% per annum. The claimant is directed to pay the Court fee for the enhanced compensation in person.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

13.04.2023

(2/2)

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Index : Yes / No

Internet : Yes/ No

To

1. The Chief Judicial Magistrate,
Krishnagiri.

2. The Record Keeper,
V.R. Section,
High Court Madras, Chennai.



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A.A.NAKKIRAN. J.,

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