



C.M.A.No.3871 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.3871 of 2019

Minor Manikandan

Rep. by Next friend and guardian

Mother Sumathi

...Appellant

Vs.

1. A.R.Raja
(Given up)

2. Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.5, G.H Road, Theni Town,
Theni District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.256 of 2009 dated 13.08.2012 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Mayiladuthurai.

For Appellant : No Appearance

For Respondent : R1 – Given up
: Mr.K.Vinod, for R2



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JUDGEMENT

Aggrieved by the judgment and decree passed by the Motor Accident Claims Tribunal cum Additional Sub Judge, Mayiladuthurai in M.C.O.P.No.256 of 2009 dated 13.08.2012, the claimant has come up with this Appeal.

2. The case of the Appellant is that, on 12.01.2009 at about 01.00 pm., when the appellant was playing in front of his house, a tractor bearing Regn.No.TN-51-D-6850, 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, he sustained grievous injuries all over his body and his urinary bladder got completely damaged and suffered serious fracture injury in his pelvic bone and he took treatment as inpatient from 12.01.2009 till 12.02.2009 in Thanjavur Medical college and hospital. Thereby, he filed a claim petition claiming a compensation of Rs.7,00,000/-.

2.1 Before tribunal, the appellant examined three witnesses viz.,



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P.W.1 to P.W.3 and marked 12 documents viz., Ex.P1 to P12 and the respondents examined three witnesses viz., R.W.1 to R.W.3 and marked 3 documents viz., Ex.R1 to R3. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.1,85,400/-, without considering the fact that the appellant sustained 75% permanent disability and the tribunal failed to adopt the maximum multiplier of 18 instead of 15 and further the appellant is only aged about 5 years at the time of accident and if the above said accident had not happened, the appellant, after completing his studies, would have earned a minimum of Rs.10,000/- per month, however, the tribunal had taken the annual income of Rs.15,000/- per annum, which is not sustainable and the compensation awarded under other heads are also very meagre. Aggrieved by the said order, the claimant has come up with this appeal seeking enhancement of the compensation.

3. Though the matter was adjourned repeatedly at the request of the learned counsel for the appellant, today when the matter was taken up for hearing, there was no representation on behalf of the appellant. Considering the period of pendency of this Appeal, this Court is inclined



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to dispose of the same based on the materials available on record.

4. 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 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 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 5 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 75% permanent disability. However, the tribunal had awarded a meagre compensation of Rs.1,68,750/- under the head “Loss of income“, which is wholly erroneous.



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7. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant.

8. Further, it is pertinent to note that, the accident is of the year 2009 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. However, considering the age and nature of injury sustained by the appellant and also the fact that the over all percentage of disability is on the higher side and the extent of the disability would really affect the appellant from discharging his duties, this Court fixes Rs.4000/- per percentage of disability. Therefore, the compensation awarded under the head “Loss of earning capacity” is modified to Rs.3,00,000/- ($75\% * 4000 = 3,00,000/-$).



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Further, the compensation awarded under the heads “Medical expenditure”, “Pain and sufferings”, “Extra Nourishment” and “Transportation” are on lower side and the same has to necessarily be enhanced. Further, no compensation has been awarded under the head “Future medical bills” and therefore, a sum of Rs.50,000/- is awarded under the said head.

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

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	1,68,750/-	3,00,000/- (enhanced)
Medical bills and expenditure	1,670/-	5,000/- (enhanced)
Pain and sufferings	5,000/-	40,000/- (enhanced)
Transportation	5,000/-	20,000/- (enhanced)
Extra nourishment	5,000/-	20,000/- (enhanced)
Future medical expenditure	-	50,000/-
Total	1,85,400/-	4,35,000/-



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10. Further, it is pertinent to note that, when the claim petition was filed in the year 2009, the appellant was minor, aged about 5 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.Sumathi from the guardianship. The Registry shall carry out the necessary amendments.

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.1,85,400/-** to **Rs.4,35,000/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.256 of 2009 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 four (4) weeks from the date of receipt of a copy of this judgment. On



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such deposit 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, upon production of necessary proof for payment of Court fee for the enhanced compensation by the appellant. No costs.

16.11.2023

skt

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

To

- 1.The Motor Accident Claims Tribunal cum Additional Sub Judge,
Mayiladuthurai
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.

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