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C.M.A.No.2714 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2714 of 2018

Tata AIG General Insurance Company Limited,
2nd Floor, Samson Towers, No.403-L,
Pantheon Road, Egmore, Chennai – 600 008.

.... Appellant

vs.

1. Minor Ramachandran
(Minor represented by next friend
father Murugavel)

2.The Correspondent,
Paramveer Banasingh Vidhya Academy of Excellence,
Attukarampatti, Pennagaram Road,
Dharmapuri

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 19.04.2018 made in M.C.O.P.No.74 of 2017 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Krishnagiri.

For Appellants : Mr.K.Vinod

For Respondent : Mr.P.Paramasiva Doss for R1



C.M.A.No.2714 of 2018

WEB COPY

JUDGMENT

Being dis-satisfied with the award passed by the Motor Accident Claims Tribunal, Sub Court, Krishnagiri, in MCOP.No.74 of 2017 dated 19.03.2018, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal challenging the quantum of compensation.

2. The claim petition was filed by the father of the minor Ramachandran under Section 166 of the Motor Vehicle Act, 1988 claiming compensation for the injuries sustained by the minor petitioner in the road accident that occurred on 22.03.2016, estimating the compensation at Rs.50,00,000/-.

3. The learned Tribunal after hearing both sides and upon consideration of oral and documentary evidence, hold the second respondent liable to pay the compensation of Rs.11,18,000/- with interest at 9% per annum from the date of filing of the petition till the date of deposit.



4. The learned counsel appearing for the Insurance Company Mr.Vinod, would strenuously argue that the partial permanent disability assessed at 40% for the minor, is on the higher side. To strengthen his arguments, the Judgment of the Hon'ble Supreme Court in **Mallikarjun Vs. Divisional Manager, National** reported in 2013 ACJ 2445 was referred to. He would further contend that in Meghala case, he sustained facial injury and she being a actress 100% disability was taken and the same will not apply to the facts of this case and, he prayed to reduce the compensation.

5. Per contra, the learned Counsel appearing for the respondent/claimant would vehemently contend that the claimant suffered crush injury over right foot and the Medical Board assessed partial permanent disability at 40% and based on the said disability assessment, the Trial Court has granted compensation of Rs.11,18,000/- thus the order being reasonable one, and need not to be interfered with.

6. To support his argument, the following Judgments were referred to:



C.M.A.No.2714 of 2018

(1) V.Mekala Vs M.Malathi and another, reported in (2014) 11

Supreme Court Cases 178.

(2) Minor Tamizhmeena @ Meena Vs. T.N.S.T.C. Limited (Division – I), Villupuram, reported in 2015(2) TN MAC 301.

7. Heard the arguments of the learned counsel on both sides and perused the materials available on record.

8. At Trial, on the claimant side, father of the minor petitioner Murugavel was examined as PW.1. Ex.P.1 to Ex.P.9 were marked. Ex.P.3 is the discharge summary. On the respondent side, neither any oral evidence was let in, nor any document was marked. Disability certificate issued by the medical board for the minor petitioner is Ex.C.1.

9. It is the evidence of PW.1, that on 22.03.2016 at about 8.20 hours, while the minor petitioner was standing near Adagadi Laxminarayana Temple, a bus belonging to the second respondent Educational Institution bearing Registration No. TN-60-A-8377, while



C.M.A.No.2714 of 2018

moving in a reverse direction, hit against the petitioner and due to the impact, the petitioner sustained crush injury over the right foot, which is not in dispute.

10. It is seen from Ex.P.2, wound certificate issued by the Ganga Medical Center and Hospital, Coimbatore that the minor petitioner suffered crush avulsion with loss of right heel pad with 1st inter Tarsal Joint Dislocation and open fracture of Medial Cuneiform. He had taken treatment at the said hospital from 22.03.2016 to 02.04.2016. The disability was assessed by the Medical Board at 40% which is partial permanent disability.

11. It is useful to refer to the Judgment of the Hon'ble Supreme Court rendered in the case of **Mallikarjun Vs. Divisional Manager, National Insurance Company and another reported in 2013 ACJ 2445**. In the said case, the appellant was aged about 12 years and was hit by the motor cycle and suffered right lower 1/3 rd leg deformity, movements restricted, diagnosis of fracture and other injuries. The minor was walking with limb on the right side, shortening of right lower limb by 1.5 cm, besides other



C.M.A.No.2714 of 2018

serious difficulties. The disability was assessed at 34%. The Tribunal granted compensation of Rs.63,500/- against which, an appeal was preferred, wherein it was enhanced to Rs.1,09,500/- by this Court. On Special Leave Petition, Civil Appeal was preferred before the Hon'ble Supreme Court and it was ordered as follows:

<i>Head</i>	<i>Compensation</i>
For pain and suffering	Rs.3,00,000/-
For discomfort, inconvenience, loss of earnings to the parents during the period of hospitalization	Rs.25,000/-
For Medical and incidental Expenses	Rs.25,000/-
For Future Medical expenses	Rs.25,000/-
Total	Rs.3,75,000/-

12. On the respondent side, the following judgments were referred to:

Minor Thamizhmeena @ Meena Vs. T.N.S.T.C. Ltd (Division –

I) Villupuram reported in 2015 (2) TNMAC 301. In the said case, The injured claimant was a minor girl aged about 10 years, because of the rash and negligent driving of the bus, it ran over her left leg and she sustained compound committed bone fracture left supra cardinal penal with closed both bone fracture with deglowing injuries. Her left leg completely twisted



C.M.A.No.2714 of 2018

and dis-figured. Disability assessed at 75% was taken by the Tribunal at

55% and she was awarded compensation at Rs.1,20,000/-. In the appeal

before this Court, as she was in-patient for more than four months, unable

to walk independently and could not continue her studies, Notional income

was fixed at Rs.12,000 per month by applying 50% future prospects with

multiplier 15 for the loss of earning power was arrived at 11,88,000/- and

an amount of Rs.1,00,000/- each was awarded for pain and suffering and

for loss of amenities, for martial prospectus Rs.2,00,000/- awarded and for

attender charges it was enhanced to Rs.50,000/- and for extra nourishment

Rs.1,00,000/-, totally Rs.17,50,000/- was awarded, following the law laid

down by the Hon'ble Supreme Court in **V.Mekala Vs. M.Malathi and**

another reported in (2014) (2) TNMAC (6) SCC.

13. In **Divya versus The National Insurance Company Limited**

and Another reported in 2022 LiveLaw (SC) 892. In this case, the Apex

Court for a girl aged about 2 years was a suckling, sustained serious

injuries. The Medical Board assessed disability at 75% and neuro-physical

disability at 40%. The High Court against the order of dismissal, ordered

compensation an amount of Rs.13,34,000/- this was ought to have



C.M.A.No.2714 of 2018

challenged by way of SLP, by the claimant side.

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14. The Hon'ble Supreme Court granted compensation in case of **Divya Versus The National Insurance Company Limited and Another reported in 2022 LiveLaw(SC) 892**, as follows:

<i>Award towards</i>	<i>Amount</i>
For Attender charges	Rs.17, 00,000/-
For Pain and suffering and loss of amenities	Rs.3,00,000/-
For Marriage Prospectus	Rs.3,00,000/-
For Future Medical Treatment	Rs.1,00,000/-
Grant of Additional amount for special diet	Rs.90,000/-
Total	Rs.24,90,000/-

15. In **Kajal Vs. Jagdish Chand and others reported in (2020) 4 SCC 413**. In the said case, the victim who was young girl of 12 years attending school, while, travelling on a tractor with her parents, suffered serious injuries resulting in brain damage, left with a very low IQ and severe weakness in all four limbs, severe hysteria and bed ridden for rest of life. Disability was assessed at 100% , for which the Hon'ble Supreme Court enhanced the amount of compensation of Rs.62,25,000/- under the



C.M.A.No.2714 of 2018

following heads:

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<i>Heads</i>	<i>Amount</i>
For expenses relating to treatment, hospitalisation and transport expenses	Rs.2,50,000/-
Loss of earnings (family members)	Rs.51,000/-
Loss of future earnings	Rs.14,66,000/- (Rs.4846 + 40% future prospectus =Rs..6784.40 per month x 12 x18 = 14,66,000/- (= Rs.14,65,430.40/-)
Attendant Charges	Rs.21,60,000/-
Pain, suffering, loss of amenities	Rs.15,00,000/-
Loss of marriage prospectus	Rs.3,00,000/-
Future Medical Treatment	Rs.5,00,000/-
Total	Rs.62,27,000/-.

16. In this case, the victim was aged about 16 years at the relevant point of time. Due to accident, he finds it difficult to stand and to walk and he was walking with a stick. It is a common understanding that, if a person suffers crush injury over foot, it would be extremely difficult for the injured to stand and walk like an ordinary person, his suffering would continue till his last breathe. In the case of **Concord of India Insurance Company Limited Vs Nirmala Devi** reported in 1979 4 SCC 365, the Apex Court held that “*the determination of the quantum must be liberal, not*



C.M.A.No.2714 of 2018

niggardly since the law values life and limb in a free country in generous scales”.

17. It is also useful to refer to the observations of Apex Court in **K. Suresh Vs. New India Assurance Company Limited reported in 2012 12 SCC 274 as follows:**

“There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988, stipulates that there should be grant of “just compensation”. Thus, it becomes a challenge for a court of law to determine “just compensation” which is neither a bonanza nor a windfall, and simultaneously, should be a pittance”.

18. In this case, the accident took place on 22.03.2016 when the injured was 16 years old. Considering the nature, effect and impact of the injury, the Tribunal has fixed the notional income at Rs.8,000/-. By adding 50% towards future prospects, the monthly income was fixed at Rs.12,000/-. By applying multiplier 15, the loss of income was arrived at



C.M.A.No.2714 of 2018

Rs.8,64,000/-. With this partial permanent disability, the injured could have to suffer life long and his marriage prospects is doomed to some extent. He would find it difficult to run, to walk, and while lifting the weight. Considering the difficulties, he would meet out during his life



C.M.A.No.2714 of 2018

time, the amounts awarded by the Tribunal appears to be reasonable under various heads and hence it need not be interfered with.

19. With the above observations, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal in M.C.O.P.No.74 of 2017 dated 19.04.2018 is hereby confirmed. No costs.

26.09.2023

Index : Yes/No
Speaking / Non-speaking order

drl

To:

1. The Motor Accident Claims Tribunal,
Special Sub Court, Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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C.M.A.No.2714 of 2018

R.KALAIMATHI, J.,

drl

C.M.A.No.2714 of 2018

26.09.2023