



C.M.A. No. 2029 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2029 of 2021

Minor. T. Udayanithi
(rep. by his father Thirugnanaselvan)

... Appellant / Petitioner

Vs.

1. S. Gajendran

2. The United India Insurance Co. Ltd.,
Motor Third Party Claim Office,
No.6-A, Varadanar Street,
Vedachala Nagar,
Chengalpattu Town and Taluk,
Kancheepuram District.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.08.2018 passed in M.C.O.P. No.82 of 2011 on the file of the Additional Subordinate Judge, Motor Accident Claims Tribunal, Chengalpattu.

For Appellant	:	Mr. M. Sivakumar
For R1	:	No Appearance
For R 2	:	Mr. C. Paranthaman



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.82 of 2011, dated 18.08.2018 on the file of the Additional Subordinate Judge, Motor Accident Claims Tribunal, Chengalpattu.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The claimant is a minor T. Udayanithi, aged about 5 years at the time of occurrence. The case of the claimant is that on 06.03.2011 at about 5:30 PM, walking on the GST Road of Janakipuram Village, at that time an ambassador car bearing Registration No.TN-21-L-7836, which belongs to the first respondent, came on Maduranthakam – Chengalpattu GST Road driven by its driver in rash and negligent manner, hit on the minor claimant. Due to which, the minor claimant has sustained grievous multiples injuries all over his body. The minor claimant got first aid at Chengalpattu Medical College Hospital and got admitted at Kanchi



Kamakoti Child Trust Hospital, Chennai as inpatient from 06.03.2011 to 06.04.2011. A criminal case was also registered in Crime No.245/2011 u/s. 279,337 of I.P.C. against the driver of the car bearing Registration No.TN-21-L-7836. For the grievous injuries sustained, the minor claimant has come forward with the claim petition seeking compensation for a sum of Rs.10,00,000/- under section 140 and 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the Ambassador car bearing Registration No.TN-21-L-7836, has not contested the claim and remained ex-parte. The second respondent – insurance company has filed a counter and contended that the driver of the car has no valid driving licence and no valid insurance policy. The driver has driven the vehicle with due care and caution in moderate speed by following the traffic rules and regulations, but the minor claimant, who was aged about 5 years could not know the impacts was wandering on the road without noticing the vehicle, which resulted in the accident. The insurance company also contended that the accident occurred due to careless attitude of the parents of the minor claimant, hence prays to dismiss the claim petition.



5. On the side of the claimant, P.W.1 was examined and Exs.P.1 to P.10 were marked, Ex.P.10, the disability certificate was marked by the Court on consent. On the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence, placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the car bearing Registration No.TN-21-L-7836 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.11,96,735/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation, the minor claimant represented by his father has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the minor claimant has submitted that the Tribunal has fixed a very low notional income of Rs.5,000/- per month and the Tribunal has not properly appreciated the



disability sustained by the minor claimant, who was assessed by the Government Medical Board, Chengalpattu and the nature of the injuries sustained by the minor claimant during the accident, due to which, the minor claimant has lost entire life and living in vegetative life, unable to walk and speak. The learned counsel also submitted that the Tribunal ought to have fixed disability as 100% and relied on the judgment of Hon'ble Apex Court in *Kajal vs Jagdish Chand and others reported in [2020 (1) TN MAC 328 (SC)]*, for granting future expenses towards attender charges, wherein the judgment, the Apex Court has fixed the future attender charges for the claimant therein for her mental and physical impairments. The learned counsel also further submitted that the compensation awarded under various heads is on the lower side, hence prays to enhance the same.

9. Per contra, the learned counsel appearing for the insurance company has submitted that based on the evidence placed on record, the Tribunal has properly awarded the compensation, hence prays to confirm the same.

10. Heard submissions made on both sides and perused the materials placed on record:



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11. The claimant herein is a minor aged about 5 years, Ex.P.2, discharge summary issued by Kanchi Kamakoti Childs Trust Hospital, shows that he has suffered "Diffuse Axonal Injury Urinary Tract Infection / Exantematous Pustulosis" and Taumatic Brian Injury and paralysed partially. The minor claimant was in coma stage for almost one and half months. Thereafter he regained consciousness but was not able to speak and walk. The Ex.P.4 - discharge summary issued by Arignar Anna Government Hospital at Chennai, shows that he was admitted on 27.04.2011 and was discharged on 10.06.2011 and was treated conservatively for his inability to use his both upper and lower limbs. Further, Ex.P.5-discharge summary shows he has undergone treatment at Government Insititue of Rehabilitation Medicine at K.K. Nagar, Chennai, wherein he was treated for "**TBI with speech impairment**" and for "**Traumatic brain injury sequelae**". The Ex.P.8 is the National Identity Card issued by the Department of Rehabilitation, in which the disability is mentioned as 80% and the Ex.P.9 is the Occupation Therapy Report issued at KIDS Learning Centre, wherein the minor petitioner had joined to improve his skills lost due to "Traumatic Brain Injury". Ex.P.10-disability certificate issued by the Medical Board of



Doctors, wherein the disability of the minor claimant is fixed as 80% partial permanent disability. Hence, the Tribunal has rightly fixed the disability of the minor claimant as 80% partial permanent disability and held that as functional disability and this Court finds no infirmity and the same is hereby confirmed.

12. With regard to quantum of compensation awarded under disability, the Tribunal has fixed Rs.5,000 per month as notional income and adopted 15 as multiplier as per the II schedule of Motor Vehicles Act and for 80% disability, fixed Rs.7,20,000/- as compensation for the claimant's disability. This Court finds no infirmity in it and confirms the same. However, the Tribunal as granted Rs.1,50,000/- under the head loss of future income, which this Court finds on the lower side, hence by the dictum laid down by *National Insurance Co. Ltd., vs. Pranay Sethi case [2017(2) TN MAC 609 (SC)]*, the future prospectus is fixed as 40%, hence the award of compensation under the head loss of future income by the Tribunal is modified to Rs.2,88,000/-.

13. The Tribunal has not granted compensation under the head loss



of amenities, future medical expenses and attender charges, hence this Court considering the nature of injuries sustained by the minor claimant fix Rs.1,00,000/- towards loss of amenities and Rs.50,000/- towards future medical expenses. The minor claimant has undergone medical treatment for almost 139 days and the fact that he was accompanied by his father during his treatment period granting of attender charges is just and this Court is inclined to award Rs.50,000/- towards attender charges. The Tribunal has awarded Rs.10,000/- towards transportation charges, which is on the lower side by considering the treatment undergone by the minor claimant, hence the same is modified to Rs.25,000/-. The compensation awarded by the Tribunal under medical bills, pain and suffering and mental agony of parents are just, hence, the same are confirmed.

14. The other contention of the learned counsel appearing for the minor claimant regarding granting of future attender charges as per the Hon'ble Apex Court judgment in *Kajal vs Jagdish Chand and others reported in [2020 (1) TN MAC 328 (SC)]*, in paragraph Nos. 22 to 25 it is held as follows:

"Attendant charges



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22. *The attendant charges have been awarded by the High Court @ Rs. 2,500/- per month for 44 years, which works out to Rs. 13,20,000/-. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in **Gobald Motor Service Ltd. v. R.M.K. Veluswami** MANU/SC/0016/1961 : AIR 1962 SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of 'just compensation' within the meaning of the Act.*

23. *It would be apposite at this stage to refer to the observation of Lord Reid in **Taylor v. O'Connor** MANU/UKHL/0011/1970 : 1971 AC 115: Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year's dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved, the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and counsel have a wealth of experience which is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special, I think, that these matters must have separate consideration if even rough justice is to be done and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of Income Tax and, it may be, surtax.*



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24. This Court has reaffirmed the multiplier method in various cases like **Municipal Corporation of Delhi v. Subhagwati and Ors.** MANU/SC/0010/1966 : 1966 ACJ 57, **U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.** MANU/SC/1154/1996 : (1996) 4 SCC 362, **S anddeep Khanduja v. Atul Dande and Ors.** MANU/SC/0108/2017 : (2017) 3 SCC 351. This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.

25 . Having held so, we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is Rs. 4,846/- per month. We, therefore, assess the cost of one attendant at Rs. 5,000/- and she will require two attendants which works out to Rs. 10,000/- per month, which comes to Rs. 1,20,000/- per annum, and using the multiplier of 18 it works out to Rs. 21,60,000/- for attendant charges for her entire life. This takes care of all the pecuniary damages."

15. Considering the condition of the minor claimant, who is unable to speak, walk, he need a special care and assistance throughout his life, hence as per the Hon'ble Apex Court judgment cited supra, this Court is inclined to grant a lump sum of Rs.2,00,000/- towards future attender charges for the minor claimant.



16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability Compensation	7,20,000/-	7,20,000/-	Confirmed
2.	Loss of future income	1,50,000/-	2,88,000/-	Enhanced
3.	Extra Nourishment	50,000/-	50,000/-	Confirmed
4.	Transportation expenses	10,000/-	25,000/-	Enhanced
5.	Medical Bills (Ex.P.6 & P.7)	91,735/-	91,735/-	Confirmed
6.	Pain & Sufferings	1,50,000/-	1,50,000/-	Confirmed
7.	Mental agony of parents	25,000/-	25,000/-	Confirmed
8.	Attender Charges for the treatment period	---	50,000/-	Granted
9.	Loss of amenities	---	1,00,000/-	Granted
10.	Future Medical expenses	---	50,000/-	Granted
11.	Future Attender charges	---	2,00,000/-	Granted
	Total Compensation	11,96,735/-	17,49,735/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,96,735/- is hereby enhanced to **Rs.17,49,735/- [Rupees Seventeen Lakh Forty Nine Thousand Seven Hundred and Thirty Five only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim



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Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.82 of 2011 on the file of the Additional Subordinate Judge, Motor Accidents Claims Tribunal, Chengalpattu. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

30.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu, Kancheepuram District.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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