



C.M.A(MD)No.1103 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1103 of 2016

Minor.Anas @ Mohammed Anas
Represented through Guardian and mother Sekuammal
... Appellant/Petitioner
Vs.

1.Prince

2.Sriram General Insurance Limited,
1000E-8, Riico Industrial Area,
Sitapura, Jaipur,
Rajasthan State – 302 022. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair order and decreetal order rendered in M.C.O.P.No.137 of 2013 before Chief Judicial Magistrate/Motor Accident Claims Tribunal, Pudukottai, dated 13.04.2015 for enhancement.

For Appellant : Mr.N.Balakrishnan

For Respondents : No Appearance

JUDGEMENT

The present appeal has been filed by the claimant seeking enhancement of compensation of the award amount granted by the Motor Accident Claims Tribunal, Pudukkottai in M.C.O.P.No.137 of 2013.



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2. As per the claim petition, the minor when he was walking on the road, he was hit by a vehicle belonging to the 1st respondent and insured with the 2nd respondent. According to the claimant, the 1st respondent vehicle was driven in a rash and negligent manner and he was responsible for the accident. The claimant has prayed for a sum of Rs.30,00,000/- towards compensation.

3. A counter was filed by the insurance company contending that only the minor was responsible for the accident since he had suddenly crossed the national highways road without noticing the lorry which was coming in a moderate speed. The company had further contended that the amount claimed as compensation is highly excessive and without any legal foundation.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that only due to the rash and negligent driving of the vehicle belonging to the 1st respondent, the accident has taken place and the tribunal has further found that the respondents 1 and 2 are jointly and severally liable to pay compensation.



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5. After arriving at a finding relating to the joint liability upon the respondents, the tribunal considered the issue of quantum. The tribunal was pleased to award Rs.3,000/- per percentage of disability and has granted a sum of Rs.1,62,000/- towards permanent disability on the ground that the certificate reveals the disability of 54%. The tribunal was pleased to accept the medical bills and has awarded a sum of Rs.3,02,000/-. The tribunal has further awarded a sum of Rs.41,900/- towards transport expenses and also awarded a sum of Rs.25,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment and in total a sum of Rs.5,35,900/- was awarded along with 7.5% interest. Challenging the said award, the claimant has filed this appeal seeking enhancement.

6. The learned counsel appearing for the appellant had relied upon a judgment of the Hon'ble Supreme Court in ***AIR 2014 SC 736 (Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and others)***. He particularly relied upon Paragraph No.12, which is extracted as follows:

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the



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approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs. 1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents.”

7. The learned counsel for the appellant had also relied upon a judgment of the Hon’ble Supreme Court reported in **2015 (1) SCC 539 (Kumari Kiran through her father Harinarayan Vs. Sajjan Singh & Others)** Paragraph No.14, which is extracted as follows:

“....Hence, this Court in accordance with the principles laid down by this Court in Mallikarjun case, and after examining the facts, evidence on record and circumstances of the case on hand, we deem it fit and proper to award Rs.3,00,000/- towards permanent disability of the appellant-minors viz.Kumar, Kiran and Master Sachin, since they have suffered 30% and 20% permanent disability respectively, due to the shortening of



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their right leg by one inch after the injuries sustained in the motor accident. Further, upon considering the age of appellant-minors, they have a long journey ahead of them in their lives, during which they along with their parents will have to endure an immeasurable amount of agony and uncertain medical expenses due to this motor-vehicle accident. Thus, based on the principles laid down in the above case, we award Rs.25,000/- each towards agony to parents and Rs.25,000/- each towards future medical expenses.”

8. Therefore, according to the learned counsel appearing for the appellant, in the present case, disability has been assessed to 54%. In view of the judgment of the Hon’ble Supreme Court in ***AIR 2014 SC 736 (Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and others)***, the tribunal ought to have awarded a sum of Rs.4,00,000/- towards permanent disablement and another sum of Rs.50,000/- to the parents towards mental agony and another sum of Rs. 25,000/- towards future medical expenses. Therefore, he sought for enhancement of the award passed by the tribunal.

9. Though the matter was listed on various occasions for the appearance of the learned counsel for the respondents, he has not



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appeared and therefore, this Court proceeds to pass the order on merits after hearing the learned counsel for the appellant.

10. A perusal of the judgment of the Hon'ble Supreme Court reported in *AIR 2014 SC 736 (Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and others)* will clearly indicate that whenever minor children incurs disability on account of motor accident, the Hon'ble Supreme Court has fixed the amount depending upon the percentage of disability suffered by the minor children. As per the said judgment, where the disability is above 30% and below 60%, a fixed amount of Rs.4,00,000/- could be awarded. Therefore as rightly contended by the learned counsel appearing for the appellant, a sum of Rs.4,00,000/- is awarded under the head of permanent disability in the place of Rs.1,62,000/- fixed by the tribunal.

11. The learned counsel appearing for the appellant had relied upon a judgment of the Hon'ble Supreme Court reported in *2014 SAR (Civil) 1188 (Kumari Kiran through her father Harinarayan Vs. Sajjan Singh & Others)*. In the said judgment, a sum of Rs.25,000/- to each one of the parents has been awarded towards mental agony and another sum of Rs.25,000/- has been awarded towards future medical expenses.



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Following the said judgment, this Court is inclined to award a sum of Rs.50,000/- to parents towards mental agony and another sum of Rs.25,000/- towards future medical expenses of the injured minor boy.

12. Considering the above said facts, the award of the tribunal is modified to the following effect:

(i) Under the head of permanent disablement, a sum of Rs.4,00,000/- (Rupees Fourt Lakh only) is awarded and under the head of medical expenses, a sum of Rs. 3,02,000/- (Rupees Three Lakh and Two thousand only) is awarded and under the head of transport expenses, a sum of Rs.41,900/- (Rupees Forty One Thousand and Nine Hundred only) is awarded and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) is awarded to each one of the parents towards mental agony, totally a sum of Rs.50,000/- (Rupees Fifty Thousand only). A sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) is awarded towards future medical expenses and a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) is awarded towards pain and sufferings to the injured boy and a sum of Rs.5,000/- (Rupees Five Thousand only) is awarded



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towards extra nourishment. Therefore, a total amount of Rs.8,48,900/- (Rupees Eight Lakh Forty Eight Thousand and Nine Hundred only) is awarded towards compensation.

(ii) The said award amount shall carry interest at the rate of 7.5% from 29.04.2013 onwards. The enhanced amount shall be deposited by the insurance company within a period of eight (8) weeks from the date of receipt of a copy of this order.

13. The Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

24.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Chief Judicial Magistrate,
Pudukkottai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Judgment made in
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