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Civil Miscellaneous Appeal No.1556 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1556 of 2024

Minor D Karthick
S/o.T.Dharmaraj
No.9/75, Onakkalur, Jallipatti,
Udumalpet Taluk,Thiruppur District,
Minor Appellant represented by next friend guardian father
T.Dharmaraj ... Appellant

Vs.

1. R.Ganesan

2.A.Abdul Malik

3. The National Insurance Company Limited,
Branch Office at No.5, College Road,
1st Floor, Opp to Income Tax office,
Karaikudi, Sivagangai District 630 002

4. National Insurance Co Limited,
Divisional Office at Selvavinayaki Complex
Perundurai Road, Near Collector Office,
Erode – 638 011 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 29.03.2023 in M.C.O.P.No.782 of 2018 on the file of the Motor Accident Claims



Civil Miscellaneous Appeal No.1556 of 2024

Tribunal (Special Subordinate Judge), Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.S.Arun Kumar
for R3 and R4

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal(Special Subordinate Judge) in MCOP No.782 of 2018 dated 29.02.2023, has filed this appeal.

2. The claimant was a minor aged about 14 years. On 07.06.2018, he was travelling as a pillion rider in a two wheeler which was driven by one Manikumar at Palani to Anaimalai road and at about 4.10 p.m., the offending vehicle which came in the opposite direction was driven in a rash and negligent manner and it dashed on the two wheeler and as a result, the claimant was thrown out of the bike and he sustained fracture of both bone right leg. The claimant underwent treatment as an in patient for nearly 8 days and he also underwent one surgery. It is under



these circumstances, the claim petition came to be filed before the tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.1,73,000/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earnings	Nil
2.	Transport to Hospital	Rs.5,000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Attender Charges	Rs.5,000/-
5.	Future Medical expenses	Nil
6.	Damages to clothes and Articles	Rs.3,000/-
7.	Medical Expenses	Rs.95,000/-
8.	Pain and sufferings	Rs.30,000/-
9.	Permanent disability and loss of earning power	Rs.25,000/-
	Total	Rs.1,73,000/-



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The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

5. Heard Mr.R.Nalliyappan, learned counsel for appellant and Mr.S.Arun Kumar, learned counsel for respondents 3 and 4.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The Tribunal while fixing the compensation under the head of permanent disability has only taken 5% partial permanent disability for the appellant, even though, Ex.C1 disability certificate issued by the



Medical board quantified the same as 20%. The learned counsel for the appellant submitted that multiplier method ought to have been adopted in this case since the claimant had suffered fracture of both bone right leg. The claimant was aged about 14 years and there is no material to come to a conclusion that the claimant suffered from any functional disability. However, considering the fact that the accident had taken place in the year 2018, this Court is inclined to fix Rs.7,000/- per percentage. Accordingly, the compensation under the head of disability is fixed as follows :-

$$\text{Loss of Disability} = \text{Rs.7,000} \times 20 = \text{Rs.1,40,000/-}$$

9. The claimant has undergone treatment as an in patient for nearly 8 days and he also underwent one surgery. In view of the same, this Court is inclined to enhance the compensation under the head of Transportation to hospital to Rs.10,000/-, Extra Nourishment to Rs.20,000/- and Attendar Charges to Rs.10,000/-.

10. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following terms :-



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<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earnings	Nil
2.	Transport to Hospital	Rs.10,000/-
3.	Extra Nourishment	Rs.20,000/-
4.	Attender Charges	Rs.10,000/-
5.	Future Medical expenses	Nil
6.	Damages to clothes and Articles	Rs.3,000/-
7.	Medical Expenses	Rs.95,000/-
8.	Pain and sufferings	Rs.30,000/-
9.	Permanent disability and loss of earning power	Rs.1,40,000/-
	Total	Rs.3,08,000/-

11. The compensation awarded by the Tribunal at Rs.1,73,000/- is enhanced to Rs.03,08,000/-. The respondent Insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,35,000/- is concerned, the appellant/claimant will not be entitled for



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interest for the period of delay of 159 days as was ordered by this Court in C.M.P.No.1360 of 2024, dated 12.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. The Tribunal had ordered for pay and recover in this case and therefore, it goes without saying that whatever enhanced compensation has been fixed by this Court, it shall be paid by the Insurance company and the same can be recovered from the 1st respondent.

12. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

08.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To,
Motor Accident Claims Tribunal (Special Subordinate Judge), Erode.

Civil Miscellaneous Appeal No.1556 of 2024

08.07.2024