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C.M.A.(MD)No.681 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.681 of 2021

National Insurance Company Limited,
Through its Divisional Manager,
37C, S.N.High Road,
Tirunelveli,
Tirunelveli District.

...Appellant/2nd Respondent

Vs.

1.Minor. Manoj

... 1st Respondent / Petitioner

(Minor 1st respondent represented
through his mother and next guardian
Malliga)

2.Ramarvel

... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No. 336 of 2017, dated 16.12.2020 on the file of the Motor Accidents Claims Tribunal, Special Sub Court dealing with MCOP Cases, Tirunelveli and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For R1 : Mr.M.S.Suresh Kumar

For R2 : Ex-parte



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment and decree dated 16.12.2020 passed in M.C.O.P.No.336 of 2017 by the Motor Accidents Claims Tribunal/Special Subordinate Court dealing with MCOP Cases, Tirunelveli.

2. The second respondent in M.C.O.P.No.336 of 2017 is the appellant herein.

3. The minor 1st respondent is the minor petitioner/claimant through his mother filed the claim petition in M.C.O.P.No.336 of 2017.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 336 of 2017 is adopted hereunder.

5. The brief facts of the case:

On 27.05.2016 at about 6.30 a.m. the petitioner along with their relatives were travelling in TATA cilgride vehicle bearing registration number TN 76 AA 3089 belonging to the first respondent from Vasudevanallur to Kadayanallur. While the vehicle was plying on the Kadayanallur – Panpozhi road from east to west near Mohamed garden,



the first respondent drove the vehicle in a rash and negligent manner overtook a bus and suddenly applied brake and the vehicle capsized on the left side of the road. Due to impact, the petitioner sustained multiple fractures and grievous injuries and his right hand was crushed. The petitioner was taken to Government Hospital Kadayanallur, then to Tenkasi and then to TVMC Hospital, Tirunelveli and took treatment from 27.05.2016 to 07.07.2016 as inpatient. The petitioner underwent surgery. The petitioner was 9 years old at the time of accident and he could not concentrate in his studies after accident and his future is spoiled because of injuries sustained in the accident. Hence, the minor petitioner through his mother filed the claim petition seeking compensation of Rs.20,00,000/-.

6. The 2nd respondent/Insurance Company objected the claim petition by contending that the accident was not taken place on the negligence of the driver of the car. The accident occurred due to rash and negligent driving of Tamilnadu State Transport Corporation which was coming from opposite direction.

7. Before the Tribunal both side adduced oral and documentary evidence. After hearing both and after considering the evidences, the



Tribunal has held that the accident took place due to rash and negligent driving of the first respondent. The Tribunal has considered the medical treatment taken by the petitioner and arrived a total award of Rs.21,76,200/- on various heads. Aggrieved by the said award, the appellant/2nd respondent has preferred this Civil Miscellaneous Appeal.

8. Heard both side and perused the records in this Civil Miscellaneous Appeal.

9. The learned counsel appearing for the 2nd respondent/Insurance Company has mainly argued that the claimant is 9 years old boy. The Tribunal erred in awarding compensation by fixing notional income at Rs.9,000/- p.m. and also adding 40% towards future prospectus by adopting multiplier 18. The Tribunal failed to consider the dictum of the Hon'ble Supreme Court in the case of "Master Mallikarjun /v/ Divisional Manger, National Insurance Company" reported in **2013 (2) TNMAC 338 (SC)**, wherein the Hon'ble Supreme Court issued guidelines for child victims and considered for Rs.1,00,000/- upto 10% disability, Rs.3,00,000/- upto 30% disability, Rs.4,00,000/- upto 60% disability, Rs.5,00,000/- upto 90% disability and Rs.6,00,000/- for above 90% disability. In this case, the victim was assessed 75% disability and so,



the claimant is entitled to Rs.5,00,000/-, but the Tribunal awarded Rs.20,41,200/- towards loss of earning power, which is against the legal dictum. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

10. Per contra, the learned counsel for the claim petitioner/1st respondent herein has contended that the Tribunal has made elaborate discussion over the evidence adduced by both parties and citations relied by parties. After considering all aspects, the Tribunal has awarded the compensation and there is no irregularity or miscarriage of justice as contended by the appellant/2nd respondent/Insurance Company. There is no infirmity in the award. Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

11. On hearing both and on perusal of records, there is no dispute that the accident took place due to rash and negligent driving of the first respondent who drove the vehicle TN 76 AA 3089, in which the petitioner was travelling as a passenger. There is no contra evidence adduced by the 2nd respondent, appellant herein. On perusal of medical



records, produced by the petitioner, it is clear that the petitioner sustained fracture and multiple grievous injuries. The petitioner sustained crush injury in his right hand and so, the skin from his right thigh utilized for surgery. On perusal of records, the petitioner was assessed by the Medical Board and his disability was fixed at 75% by the Medical Board as seen from Ex.C.3.

12. The only contention urged by the appellant/2nd respondent Insurance Company is that the minor petitioner is only 9 years old boy and he cannot be equated an earning member or non-earning person as per Schedule II and therefore the notional income fixed at Rs.9,000/- with future prospectus of 40% the total income fixed at Rs.12,600/- by the Tribunal is against settled principle of law as laid down by the Hon'ble Supreme Court. In such cases, the Supreme Court issued guidelines and for 75% disability, the petitioner is entitled to Rs.5,00,000/-.

13. On perusal of citation relied on by the appellant/2nd respondent, in the case of “**Master Mallikarjun /v/ Divisional Manger, National Insurance Company**” reported in **2013 (2) TNMAC 338 (SC)**, the Hon'ble Supreme Court clearly held in paragraph No.8 as



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follows:

“8.While assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration etc., have to be addressed especially in the case of child victim. For a child the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structure formula as per second schedule...”

So, considering all these aspects the Hon'ble Supreme Court laid the principle in a case arising out of accident took place in the year 2006. However, in the recent verdict reported in **(2020) 4 Supreme Court Cases 413 (Kajal Vs. Jagdish Chand and Others)** the Hon'ble Supreme Court has awarded a compensation of Rs.62,27,000/- for a 12 year old minor victim girl.

14. On perusal of judgment of the Tribunal, it is clear that before the Tribunal both sides relied on citations. The Tribunal relied on the



judgment of the Division Bench of this Court reported in **2019 (1)**

TNMAC 197 (The Oriental Insurance Co.Ltd., vs. Minor Soundarya)

and 2019 (1) TNMAC 18 (Mohammed Babu vs. MGM Travels,

Chennai), wherein an 8 years old minor victim was awarded

compensation by taking notional income of Rs.10,000/- p.m. adding 40%

towards future prospects. In this case, the minor petitioner is aged 9

years old, whose right hand was crushed and the Medical Board assessed

permanent disability at 75%.

15. The Hon'be Supreme Court in its verdict reported in **2022 Live Law (SC) 968 (Sidram vs. The Divisional Manager, United India Insurance Co.Ltd., and Anr.)** has held that the process of determining compensation by the Court is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, more so claims of injury and disability point out that '*money cannot renew a physical frame that has been battered.*' and appreciate the fixation of compensation applying multiplier on notional income. Therefore, this Court holds that the Tribunal has not erred in awarding compensation of Rs.20,41,200/- to the claimant towards loss of earning capacity by taking notional income of Rs.9,000/- with 40% prospectus and multiplier 18. There is no dispute in respect of other compensation awarded in other



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heads. In the above facts and circumstances, the award passed by the Tribunal need not be interfered and thus this Civil Miscellaneous Appeal fails.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 16.12.2020 passed in M.C.O.P.No.336 of 2017 by the Motor Accidents Claims Tribunal/Special Subordinate Court dealing with MCOP Cases, Tirunelveli is confirmed. No costs.

26.03.2024

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

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court dealing with MCOP Cases,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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