



C.M.A.(MD).No.619 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.12.2023

Delivered On : 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.619 of 2018

V.Vignesh Mani ... Appellant
(Sole appellant declared as major and his father
discharged from the guardianship vide Court order
dated 12.08.2020 made in C.M.P.(MD)No.6041 of 2019
in C.M.A.(MD)No.619 of 2018 by SSSRJ)

Vs.

1.P.S.Kesava Manohar

2.The Divisional Manager,
Oriental Insurance Company Limited,
West Veli Street,
Bhanquer Tharmasala (3rd Floor),
Opp. Railway Junction,
Madurai-1.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to modify the award passed in M.C.O.P.No.738 of 2009 on the file of the Motor Accident Claims Tribunal (District and Sessions Judge), Communal Clash Cases Court, Madurai dated 22.02.2016.



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C.M.A.(MD).No.619 of 2018

For Appellant : Mr.R.Senthil Kumar
For R2 : Mr.C.Jawahar Ravindran
For R1 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award passed by the learned Motor Accident Claims Tribunal (District and Sessions Judge), Communal Clash Cases Court, at Madurai in M.C.O.P.No.738 of 2009 dated 22.02.2016 by the appellant/petitioner/claimant seeking enhancement of the compensation.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.738 of 2009.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

(i)A gruesome accident took place on Theni-Madurai Highways Road, at Poochipatty, Vadikaruppu Kovil on 02.03.2008 at about 13.45 hours. The petitioner was travelling in a Maruti Alto car bearing registration No.TN-59-AZ-3420 with his family members from west to east direction, which was driven by its driver in a slow and moderate



C.M.A.(MD).No.619 of 2018

speed in extreme left side of the road. While so a Scorpio car bearing registration No.KL-06-D-3535, which was driven by its driver in a rash and negligent manner came from the opposite direction in a very speed and dashed against the Maruti Alto car. As the result of which, Maruti Alto car was capsized and the petitioner sustained grievous injuries all over the body including severe injury in the head. The injuries sustained by the petitioner detailed as under:-

“(A)Comminuted left patriod tempora fracture with extradural Hematoma.

(B)Post traumatic carotiod cavern fistula type A.

(C)Fracture of Med wall and roof of orbit.

(D)Redness swelling of left eye.

(E)The fracture of 2nd, 3rd, 4th metatarsal bones.”

(ii)Immediately after the accident, the petitioner was taken to Apollo hospital, K.K.Nagar Madurai wherein he took treatment as inpatient from 02.03.2008 to 20.03.2008. At the time of accident, the petitioner was minor and aged eight years. Since the petitioner's health condition became serious, Apollo Hospital, Madurai referred him to Sri Ramachandran Medical Centre, Porur, Chennai and the petitioner is



C.M.A.(MD).No.619 of 2018

continuously under treatment as out patient even thereafter. The total medical expenses incurred was Rs.6,25,000/-. The petitioner was studying third standard in Dolphin School at Madurai at the time of accident. The petitioner sustained multiple grievous injuries all over the body including severe head injury, committed left parotio temporal fracture with extradural Hematoma and post traumatic left carotid cavernous fistuala type A and swelling of left eye. The accident caused permanent disability to the petitioner and he is unable to do his previous work and the accident resulted in continuous head ache, vomiting, giddiness, loss of left eye vision, facial disfiguration and loss of memory power and he is the only son of the family. The accident caused mental agony and torture to his family members. The accident took place within the jurisdiction of Usilampatti Talak Police station. A criminal case under Sections 279, 337, 304A of IPC was registered against the first respondent's driver and the same was pending before the Judicial Magistrate No.I Court, at Usilampatti. For the injuries sustained, the petitioner had filed M.C.O.P.No.738 of 2009 seeking compensation claiming Rs.10,00,000/-.



C.M.A.(MD).No.619 of 2018

WEB COPY

4.The first respondent is the owner of the Scorpio car involved in the accident and the second respondent is the insurance company. The second respondent had filed a counter refuting the various allegations in the application of the petitioner claiming compensation of Rs. 10,00,000/-. The various allegations in various columns of the application of the petitioner were all denied as false and fraudulent. It was further substantiated by the respondents that the petitioner with the view to suit his claim has given a false narration of the manner of the accident and no accident took place as alleged by the petitioner at all. The claim of Rs.10,00,000/- is too high and exaggerated. As a matter of fact the Scorpio car bearing registration No.KL-6D-3535 is not insured with this respondent insurance company at the time of accident and the driver of said car was also not having proper and valid driving licence to drive the said car.

5.On investigation, it was learnt that the Scorpio car was a Maxi cab and there was no proper permit for the said vehicle to ply in Tamil Nadu Roads. Without a valid permit, the said car was driven on the Tamil



C.M.A.(MD).No.619 of 2018

Nadu road. Further the driver of the said car was not also not having proper valid driving licence to drive the car and also was not authorized to drive a Maxi cab without proper endorsement and he is not eligible to drive a Maxi cab or a Tourist taxi. Hence, the second respondent claimed that the petitioner ought to prove beyond doubt by means of documentary evidence that the scorpio car was covered under a valid insurance policy with the second respondent insurance company.

6.On the side of the petitioner, P.W.1 to P.W.7 witnesses were examined and Ex.P1 to Ex.P34 were marked. On the side of the respondents, R.W.1 to R.W.4 witnesses were examined and Ex.R1 to Ex.R6 were marked. The learned Tribunal on considering evidences deposed by the witnesses and various documentary evidences and appreciating the arguments putforth by all the parties and framing seven issues, proceeded with the case and concluded that the petitioner has established that the accident happened due to the negligent driving of the first respondent driver. The learned Tribunal further proceeded to decide the question as to whether the respondents 1 and 2 are jointly and severely liable to pay compensation to the petitioner. The learned



C.M.A.(MD).No.619 of 2018

Tribunal held that according to the second respondent, the drivers of both the vehicles were not having valid driving licences at the time of the accident. The first respondent was not having driving licence to drive transport vehicle. However, the petitioner produced licence of driver of Suresh and marked as Ex.P11. It is clear that the Maruti car involved was not a transport vehicle. Therefore, the said Suresh who drove the Maruti Car was having valid driving licence at the time of accident.

7.The driving licence of the first respondent was marked as Ex.R5. A perusal of said Ex.P5 would reveal that the first respondent was not permitted to drive transport vehicle and that driving licence of the first respondent did not have badge endorsement and therefore, there was violations of the policy conditions. That apart the first respondent's vehicle was registered at Kerala and to drive the said vehicles to other states like Tamil Nadu, necessary permits should to be obtained. The first respondent without obtaining any permit to ply the vehicle in Tamil Nadu has driven the vehicle in Tamil Nadu. To prove this aspect, the respondents had examined Joint R.T.O., R.W.4 and marked Ex.P6. A perusal of Ex.R6 would reveal that the vehicle bearing Registration



C.M.A.(MD).No.619 of 2018

No.KL-06-D-3535 was not given any permit to ply on roads in Tamil Nadu and hence, there was violations of policy conditions.

8.On the basis of all these facts and circumstances of the case, the learned Tribunal came to conclusion that the first respondent has violated the conditions of the policy and hence, the first respondent is liable to pay the compensation amount to the petitioner. However, by applying pay and recover rule, the second respondent was directed to pay the compensation and recover the same from the first respondent.

9.The learned Tribunal further observed that the petitioner was 8 years old at the time of accident and he had filed the claim petition through his father as legal guardian. The petitioner was admitted as in patient in Apollo hospital on 02.08.2008 and was discharged on 20.03.2008. Ex.P16 is the medical bills would reveal the medical expenditure to the tune of Rs.1,86,665/- incurred by the petitioner. After being discharged from Apollo hospital, he was admitted in Sri Ramachandra Medical Centre in Porur for his eye treatment on 21.03.2008 and was discharged on 26.03.2008. Ex.P18 was the medical



C.M.A.(MD).No.619 of 2018

WEB COPY

bills for Sri Ramachandra Medical Centre at Porur and as per the same, a sum of Rs.5,499 + Rs.2,14,908/- were incurred towards medical expenses. That apart the petitioner was taken to Sri Ramachandra Medical Centre by air and the boarding pass was marked as Ex.P20. Hence, the learned Tribunal allowed a sum of Rs.5,000/- for travel expenses from Madurai to Chennai. Ex.P19 wound certificate given by the Apollo Hospital revealed that the injuries sustained by the petitioner were grievous in nature. In total the minor petitioner has incurred Rs. 4,07,072/- towards medical expenses in both the hospitals during his treatment as inpatient. The petitioner examined Doctor Adhiyappan as P.W.7 to assess the disability and the disability certificate issued by the said Doctor was marked as Ex.P32 wherein the Doctor has assessed the disability as partial permanent disability at 50% and the learned Tribunal following the same, has fixed the partial permanent disability as 50%. The case sheet of the petitioner was marked as Ex.P28. For the purpose of compensating the petitioner for partial permanent disability of 50%, a sum of Rs.2,000/- was allowed by the Tribunal. The learned Tribunal has awarded the compensation as follows:-



C.M.A.(MD).No.619 of 2018

Head	Compensation awarded
(I)Partial Permanent Disability:	Rs.1,00,000/- (Rs.2,000x50%)
(ii)Pain and suffering	Rs.75,000/-
(iii)Transportation:	Rs.5,000/-
(iv)Medical Expenses:	Rs.4,07,072/-
Total compensation awarded:	Rs.5,87,072/- with interest @ 7.5 % from the date of the claim until the realization and costs.

10.By applying pay and recover rule, the second respondent was directed by the learned Tribunal to deposit the Rs.5,87,072/- with interest of 7.5% from the date of petition till the date of realization.

11.Challenging the same, this Civil Miscellaneous Appeal has been filed by the petitioner for seeking enhancement of compensation.

12.A critical perusal of the award passed by the learned Tribunal would throw light on the fact that the learned Tribunal had not considered the damages on account of inconvenience, hardship, frustration, etc, damages for loss of amenities in life like difficulties in running and participation in sports activities, specifically taking into



C.M.A.(MD).No.619 of 2018

consideration that the case is of a child victim. The Hon'ble Apex Court in the judgment reported in **2013 (2) TNMAC 338 (SC)** in the case of ***Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd.***, has held as follows:-

“8. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in [R.D. Hattangadi vs. M/s. Pest Control \(India\) Pvt. Ltd. and Others](#)[1], 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 a 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 structured formula as per the Second Schedule to the [Motor Vehicles Act](#) for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be



C.M.A.(MD).No.619 of 2018

WEB COPY

equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.”

13.No doubt the learned Tribunal has not awarded compensation for the following heads:-

- (i)loss of amenities,
- (ii)compensation towards inconvenience, hardship, discomfort,
- (iii)attendant charges.



C.M.A.(MD).No.619 of 2018

14.The learned counsel appearing for the appellant/petitioner categorically submitted that the notional income of the petitioner ought to have been considered by the learned Tribunal and relied upon the order passed by the Hon'ble Apex Court in the case of ***Kishan Gopal and another v. Lala and Others*** in ***Civil Appeal No.7137 of 2013*** and another case of this Court in ***Chinnakalai and others v. M.Sukumar and another in C.M.A.(MD)No.443 of 2020***.

15.However, a perusal of those judgments would reveal that these were cases of death of minor involved. In the instant case, the minor petitioner has survived with severe injuries resulting in loss of left eye vision. Considering the fact that the victim has survived the accident, I am not inclined to pass any orders with respect to notional income of the victim. However, the learned Tribunal ought to have awarded compensation for mental and physical shock and loss of amenities in life. Considering the date of accident, I am inclined to award the compensation of Rs.25,000/- towards loss of amenities and compensation of Rs.25,000/- for future mental and physical shock, hardship, inconvenience. The petitioner has taken treatment from 02.03.2008 to



C.M.A.(MD).No.619 of 2018

23.03.2008 at Apollo Hospital, Madurai and thereafter, from 21.03.2008 to 26.03.2008 as in patient at Sri Ramachandra Medical Centre, Porur, Chennai and further he was under follow up treatment for which compensation of Rs.15,000/- towards attendant charges is also hereby awarded.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Enhanced/ Confirmed
(I)Partial Permanent Disability:	Rs.1,00,000/- (Rs.2,000x50%)	Rs.1,00,000/-	Confirmed
(ii)Pain and suffering	Rs.75,000/-	Rs.75,000/-	Confirmed
(iii)Transportation:	Rs.5,000/-	Rs.5,000/-	Confirmed
(iv)Medical Expenses:	Rs.4,07,072/-	Rs.4,07,072/-	Confirmed
(v)Loss of Amenities	-	Rs.25,000/-	Enhanced
(vi)Future mental and physical shock, hardship, inconvenience	-	Rs.25,000/-	Enhanced
(vii)Attendant Charges	-	Rs.15,000/-	Enhanced
Total compensation awarded:	Rs.5,87,072/-	Rs.6,52,072/-	Enhanced



C.M.A.(MD).No.619 of 2018

WEB COPY

16. In view of the same, the compensation awarded is accordingly enhanced in the aforementioned heads.

17. The petitioner/claimant is entitled to a sum of Rs.6,52,072/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent/insurance company is directed to deposit Rs.6,52,072/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The second respondent/insurance company are entitled to withdraw the excess amount, if any. The petitioner/claimant is not entitled for interest for the default period, if there is any.



C.M.A.(MD).No.619 of 2018

18. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs.

03.04.2024

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

To

1. Motor Accident Claims Tribunal
(District and Sessions Judge),
Communal Clash Cases Court, Madurai.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.619 of 2018

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.619 of 2018

03.01.2024