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C.M.A.No.808 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.808 of 2022

S.Roshini (Minor)

Represented by Father and next friend

...Appellant/Petitioner

Vs.

1.R.Indira

2.Shriram General Insurance Co Ltd.,  
No.66, 2<sup>nd</sup> Floor, City Centre Complex,  
Thirumalaipillai Road, T.Nagar,  
Chennai – 17.

...Respondents/Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.6637 of 2013, dated 24.02.2020, on the file of IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.



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For Appellant : Mr.Terry Chella Raja for

Mr.A.Shanmugaraj

For Respondents : No Appearance for R1

M/s.V.Puspha for R2

### **J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the quantum of compensation granted by the Tribunal in the award dated 24.02.2020 made in M.C.O.P.No.6637 of 2013 on the file of the learned IV Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

2. The appellant filed M.C.O.P.No.6637 of 2013 on the file of the learned IV Judge, Small Causes Court, Chennai, Motor Accident Claims Tribunal, Chennai claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by her in the accident that took place on 09.05.2012.

3. The appellant through her father and next friend had filed a claim petition stating that on 09.05.2012 at about 11.50 p.m., while she was travelling in Bolero Car bearing Registration No.TN – 02 –AK-3399,



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the driver of the offending vehicle/lorry bearing Registration No.TN - 31 - F - 0354 which was proceeding in the same direction in a rash and negligent manner, hit the car in which, the appellant/claimant/minor travelled. As a result, the appellant sustained grievous injuries. Thus, the appellant filed claim petition claiming compensation against the respondents, being the owner and insurer of the offending vehicle.

4. The 1<sup>st</sup> respondent/driver of the offending vehicle remained exparte before the Tribunal.

5. The 2<sup>nd</sup> respondent/Insurance Company filed a counter statement denying all the averments made by the appellant in the claim petition. According to the 2<sup>nd</sup> respondent, driver of the lorry drove the same with due care and caution observing traffic rules. The accident occurred only due to the negligent act of the driver of the Bolero car bearing registration No.TN-02-AK-3399. Hence, the 2<sup>nd</sup> respondent/Insurance Company is not liable to pay any compensation to the appellant. The total compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked Exs.P.1 to Exs.P.8. Neither documents were marked nor witnesses were examined on the side of the respondents.

7. The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.57,000/- as compensation.

8. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that in case of permanent disability, the Honourable Apex Court in ***Master Mallikarjun Vs. Divisional Manager, the National Insurance Company Limited and another (Civil Appeal No.7139 of 2013)*** reported in ***CDJ 2013 SC 740*** held that when minors were involved in an accident, it is impossible to make an



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accurate assessment of compensation and that in case of permanent disability between 10% and 30%, a compensation of Rs.3,00,000/- can be awarded and for permanent disability below 10% compensation of Rs.1,00,000/ can be awarded. Hence, the learned counsel submitted that even taking a conservative view, compensation of Rs.1,00,000/- can be awarded under the heads Disability, Pain and Sufferings and Loss of Amenities and prayed for allowing the appeal.

10. Notice, sent to the first respondent/driver of the lorry has been returned with an endorsement as “*unclaimed*”. Hence, notice to the 1<sup>st</sup> respondent is dispensed with.

11. The learned counsel for the second respondent/Insurance Company per contra, submitted that P.W.2 -Doctor examined by the appellant was not the Doctor who treated the appellant. The appellant took a conservative treatment by means of “puttur” bone settle as seen from Exs.P.4 series. The appellant was not subjected to examination by the Medical Board examination. The Tribunal had taken a liberal view, fixed the disability at



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15% and rightly awarded the compensation by adopting percentage method

There is no reason to interfere with the said finding of the Tribunal and hence, prayed for dismissal of the appeal.

12. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent and perused the materials available on record.

13. This Court on perusal of the award passed by the Tribunal and records finds that admittedly the appellant has not marked the reports along with the X-ray. P.W.2 is not the Doctor who had treated the appellant. The Tribunal had not accepted the evidence of P.W.2 in totality. The Tribunal had fixed 15% disability and adopted the percentage method to award compensation. In the facts and circumstances of this case, this Court is of the view that the percentage method adopted by the Tribunal in computing compensation is justified since the the appellant had not established that she suffered functional disability. The Judgment of the Honourable Apex Court in ***Master Mallikarjun Vs. Divisional Manager, the National Insurance***



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***Company Limited and another (cited supra)*** wherein, functional disability was established through medical evidence is not applicable to the facts of this case. In the facts of this case, the percentage method adopted by the Tribunal cannot be faulted with. However, the Tribunal ought to have fixed Rs.3000/- per percentage of disability since the accident is of the year 2012. Thus by fixing Rs.3000/- per percentage of disability, the compensation awarded under the head Disability is enhanced to Rs.45,000/- (3000 X 15).

14. As regards the compensation under the heads Pain and Sufferings and Loss of Amenities are concerned, the Tribunal had awarded Rs. 5000/- each. Considering the fact that the appellant is a minor girl, this Court is of the view that compensation under these two heads are meagre and it would be appropriate to enhance it to Rs. 20,000/- each under these two heads. Accordingly, the compensation awarded by the Tribunal under the aforesaid heads are enhanced from Rs.5,000/- to Rs.20,000/- each.

15. The compensation awarded by the Tribunal under other heads are



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just and reasonable and hence, the same are confirmed. Thus the compensation awarded by the Tribunal is enhanced from Rs.57,000/- to Rs.1,02,000/- break-up follows:-

| Sl. No | Description             | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|-------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Disability              | 30,000/-                        | 45,000/-                          | Enhanced                               |
| 2.     | Medical Expenses        | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 3.     | Pain and Suffering      | 5,000/-                         | 20,000/-                          | Enhanced                               |
| 4.     | Transportation Expenses | 3,000/-                         | 3,000/-                           | Confirmed                              |
| 5.     | Additional Nourishment  | 3,000/-                         | 3,000/-                           | Confirmed                              |
| 6.     | Damages to Clothes      | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 7.     | Loss of Amenities       | 5,000/-                         | 20,000/-                          | Enhanced                               |
|        | <b>Total</b>            | <b>57,000/-</b>                 | <b>1,02,000/-</b>                 | <b>Enhanced by Rs.45,000/-</b>         |

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.57,000/- is hereby enhanced to Rs.1,02,000/- together with interest at 7.5% per annum



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(excluding the default period if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of three (3) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary petition for attaining majority. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes / No



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**SUNDER MOHAN, J**

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Copy to:-

1. The IV Judge  
Small Causes Court, Chennai  
Motor Accidents Claims Tribunal.
2. The Section Officer,  
VR Section,  
High Court,  
Madras.

**C.M.A. No. 808 of 2022**

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