



CMA No.365 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.365 of 2021

Judgment reserved on 26.03.2024	Judgment pronounced on 08.04.2024
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Minor Joshina

Rep.by her next friend/guardian
/father Arumugam

...

Appellant

Vs.

1.Manikumar

2.The Iffco-Tokio General Insurance Co. Ltd.,
New No.24, Old No.302, LIC Colony Road,
Salem – 636 004

3.Prakash

4.New India Assurance Co. Ltd.,
Sathivel Complex, Mangalam Road,
Samalapuram Post,
Tiruppur Taluk, Coimbatore District.

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Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.830 of 2018 dated 16.10.2020 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.I), Salem.

For Appellant : Mr.C.Paraneedharan
For R1, R3 & R4 : No appearance
For R2 : Mr.S.Arunkumar



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JUDGMENT

The claim petitioner is the appellant herein seeking enhancement of compensation awarded in MCOP No.830 of 2018 dated 16.10.2020 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.I), Salem.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the first respondent and the vehicle being insured with the second respondent/insurance company, the validity of the insurance company and the injuries sustained in the road transport accident are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.

3. The learned counsel appearing for the appellant/claim petitioner contended that the appellant was aged 8 years at the time of accident and she was studying 2nd standard in S.K.V. Matriculation School , Kandampalayam. For the injuries sustained in the accident, the appellant is taking treatment till date and her right leg has been shortened about 7 cm than left leg after surgery and that she has to undergo further surgery for shortening the left leg so as to equal to the right leg which would cost about



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Rs.2,00,000/-. Hence, prayed for awarding compensation towards future medical expenses.

4. On the other hand, the learned counsel appearing for the second respondent/insurance company made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

5. On the point of quantum of compensation, heard the counsel for the appellant as well as second respondent and perused the materials on record. Though notice has been served on the respondents 1, 3 & 4 and their names have been printed in the cause list, none appeared for them.

6. Before the Tribunal, the father of the appellant/claim petitioner examined himself as PW1 and marked Exs.P1 to P18. No oral and documentary evidence were adduced on the side of the respondents. The disability certificate issued by the Medical Board, Salem was marked as Ex.C1

7. On consideration of both oral and documentary evidence, the Tribunal, following the judgment of the Hon'ble Supreme court in ***Kajal***



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vs. Jagdish Chand and others has fixed the notional income of the appellant

as Rs.4846/- per month, awarded 40% future prospects and applied multiplier 18 as per judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others reported in 2017 (2) TNMAC 609 and SARLA VERMA & OTHER v. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC (1) SC.***

8. On perusal of Ex.C1- disability certificate it is seen that the appellant had suffered 95% permanent disability and it is specifically mentioned therein that the appellant had suffered hemiparesus and non-functional right lower limb with shortening and there was shortening of height on the right leg and right knee below knee position had suffered non-functional and also learning attitude deficiency has been noticed and thus the Medical Board has assessed the permanent disability of the appellant as 90%.



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9. Taking note of the permanent disability suffered by the party in the claim petition and also the evidence as could be seen from the claim petition and discharge summary, the Tribunal has rightly held that the appellant has suffered functional disability, as she could not move out of the house due to shortening of the leg and accordingly fixed the functional disability at 90% and arrived at the loss of earning capacity at Rs.13,18,887/- and also awarded compensation under other heads in a composite manner.

10(i). It is the specific evidence of PW1 that for future medical expenses, they require Rs.2,00,000/-. On perusal of the discharge summary Exs.P4, P5, P6 & P7-medical bills for the tune of Rs.12,17,650/-, this Court noticed that the accident occurred on 19.10.2017. At the time of accident, the minor appellant was aged about 8 years and studying 2nd standard in SKV Matriculation School, Kandampalayam. Immediately after the accident, she was admitted in the Vivekananda Medical Care Hospital, Elayampalayam for first-aid treatment. Thereafter, she was shifted to KMCH Speciality Hospital at Erode for further treatment and she had taken treatment as an inpatient from 19.10.2017 to 21.10.2017. During the



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treatment period, she underwent multiple surgeries. On 20.10.2017 – Right lower limb knee joint wound debridement done, spanning external fixation in right lower limb ankle knee, articular reconstruction and cancellous screw fixed in right knee joint, right elbow wound debridement and primary skin closure done in right elbow and right foot 1st and 2nd toe wound debridement and shortening closure done. Thereafter, she was shifted to Ganga Medical Centre & Hospital, Coimbatore for further treatment and she had taken treatment as an inpatient from 21.10.2017 to 20.12.2017. During the treatment period, she underwent surgeries.

10(ii) On 21.10.2017 – tracheostomy was done. On 01.11.2017, wound debridement was done, external fixation in realignment in right lower limb percutaneous pinning distal femur and proximal 1/3rd tibia and prayed for enhancement of compensation, in respect of future medical expenses.

11. After perusing the discharge summaries and the notices stated therein by the medical officer and also Ex.C1-disability certificate, which goes to show that in the right leg, there is a non-functionality and it is due to the result of crush injury. Hence, I am of the considered view that the



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notional income and the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning capacity is just and fair and thus the same is confirmed. Considering the nature of injuries and the fact that the appellant has to undergo further surgery, the amount awarded by the Tribunal towards future medical expenses is enhanced to Rs.1,50,000/-. Accordingly, the compensation awarded by the Tribunal is enhanced from **Rs.32,41,537/- to Rs.32,91,537/-**, break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Pain and Sufferings	5,00,000/-	5,00,000/-
2.	Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization	50,000/-	50,000/-
3.	Medical and incidental expenses during the period of hospitalization	12,42,650/-	12,42,650/-
4.	Future Medical expenses	1,00,000/-	1,50,000/-
5.	Loss of earning capacity	13,18,887/-	13,18,887/-
6.	Transportation charges	30,000/-	30,000/-
	Total	32,41,537/-	32,91,537/-



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12. In total, the appellant / claim petitioner is entitled to a sum of Rs.32,91,537/- (Rupees Thirty Two Lakhs Ninety One Thousand Five Hundred and Thirty Seven only).

13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.32,41,537/- to Rs.32,91,537/-**, to the extent indicated above, alongwith 7.5% interest per annum. No costs. This appeal is dismissed as against the respondents 3 and 4.

(ii) the second respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the Tribunal is directed to deposit the award amount in Fixed Deposit, in any one of the Nationalised Bank till the minor attains majority and the father of the appellant / claim petitioner is permitted to withdraw the accrued interest once in three months, for the welfare of the minor appellant.



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(iv) the claim petitioner/appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

08.04.2024

Index : Yes/No
Speaking/Non-speaking order
rgr

To

1.The Special Subordinate Judge No.I,
Salem.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.

rgr

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