



C.M.A. (MD) No. 773 of 2018

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 19.03.2024

Pronounced on : 30.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A.(MD)No.773 of 2018

and

C.M.P.(MD)No.8716 of 2018

M/s.Reliance General Insurance Company Ltd.,  
Sri Lakshmi Complex,  
1<sup>st</sup> Floor, Omalur Main Road,  
Swarnapuri, Salem.

...Appellant

Vs.

1. Minor Divya Sree  
*(represented by her natural guardian and  
next friend and mother J.Aruna)*

2. E.Sridharan

...Respondents

*(Memo dated 13.02.2024 filed on 15.02.2024 in  
USR.No.5994 is recorded, to the effect that  
issuance of notice to 2<sup>nd</sup> respondent is dispensed  
with, vide Court order dated 28.02.2024 made in  
CMA(MD)No.773 of 2018)*

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act, to set aside the fair and decretal order dated



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17.01.2018 made in MCOP.No.5443 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court for Motor Accident Cases), Trichy and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.D.Boopal  
for Mr.K.Benjamin

### **JUDGMENT**

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.5443 of 2013 dated 17.01.2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court for MCOP cases, Tiruchirappalli.

2. The appellant/insurer, who was made liable to pay compensation of Rs.10,66,889/- (Rupees Ten Lakhs Sixty Six Thousand Eight Hundred and Eighty Nine only) with interest and costs to the first respondent/claimant for the disability suffered by her, consequent to an accident occurred on 16.05.2013, challenged the quantum of compensation awarded at, by the Tribunal.



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3. It is pertinent to note that the appellant/insurer has not challenged the finding of the Tribunal mulcting liability on the appellant/insurer, but only challenged the quantum of compensation awarded by the Tribunal.

4. The learned counsel appearing for the appellant/insurer would submit that the Tribunal, without giving any finding that the injury suffered by the first respondent/claimant is functional, has granted Rs.6,00,000/- as disability compensation, that the Tribunal has also granted Rs.1,50,000/- for pain and suffering and Rs.50,000/- for loss of amenities without any basis and the same are on the higher side, that the Tribunal ought not to have granted Rs.25,000/- for extra nourishment and Rs.25,000/- for transportation charges without any proof, that grant of Rs.2,15,889/- for medical expenses is without scrutiny, that the total compensation awarded at Rs.10,66,889/- is inflated and is on the higher side and that in the absence of functional disability, the Tribunal ought not to have granted such a whopping amount and as such, the same is liable to be reduced.

5. The case of the first respondent/claimant is that due to the accident, the first respondent/claimant and the rider of the two wheeler



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were thrown away and the first respondent/claimant fell down on the right side and the left backside wheel of the lorry ran over on the first respondent/claimant's leg, that the first respondent/claimant has sustained crush injury in left leg, abrasion in left hand shoulder and elbow, swelling and contusion in backside of the body and multiple grievous injuries all over her body, that the first respondent/claimant, after the accident, was immediately taken to Kauvery Hospital, Trichy and was given inpatient treatment from 16.05.2013 to 25.05.2013 and that the parents had spent more than Rs.3 lakhs towards medical expenses and they have to spend more than Rs.2 lakhs for future treatment.

6. It is the further case of the first respondent/claimant that the first respondent/claimant was aged 13 years at the time of accident and was studying 6<sup>th</sup> standard in R.S.K. School, Thiruverumbur and due to the severe crush injury in left leg, loss of skin and bone, the first respondent/claimant is not able to stand and unable to walk, sit cross-legged, climb on steps and jump without help of others, that due to crush injury, the first respondent/claimant's left leg became completely deformed, that her studies were badly affected, that marriage life of the first respondent/



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claimant has become a question mark and gloomy and that inspite of best treatment, she could not turn to her normal life.

7. The appellant/insurer, in their counter statement, has raised formal denial to the above aspects.

8. During trial, the first respondent/claimant's mother Aruna has been examined as P.W.1 and exhibited 9 documents as Ex.P.1 to Ex.P.9. The second respondent/first respondent-owner of the vehicle had remained *ex parte*. The appellant/insurer has adduced neither oral nor documentary evidence. The disability certificate issued by the Medical Board has been exhibited as Court document as Ex.C.1.

9. P.W.1-first respondent/claimant's mother, in her evidence, would reiterate the contentions raised in the claim petition and they have also produced the wound certificate, discharge summaries, scan report and medical bills to prove the nature of injuries suffered and disability sustained.



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10. It is pertinent to note that the Medical Board, after examining the first respondent/claimant, has assessed her disability at 100%. As rightly contended by the learned counsel appearing for the first respondent/claimant, the appellant/insurer has not specifically disputed the contents of Ex.C.1-disability certificate issued by the Medical Board and the percentage of disability fixed by them. The appellant/insurer has neither produced any material nor offered any acceptable reason or ground to interfere with the said finding of the Tribunal.

11. Though the age of the first respondent/claimant was mentioned as 11 years in the medical records, taking note of the evidence of the first respondent/claimant's mother, the Tribunal has rightly fixed the age of the first respondent/claimant as 13 years at the time of accident. Since the first respondent/claimant was a non-earning member, the Tribunal, taking note of the decision of the Hon'ble Supreme Court in the case of ***Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another*** reported in ***2013(2) TN MAC 338 (SC)*** and also considering the fact that the first respondent/claimant has sustained 100% disability, has granted a sum of Rs.6,00,000/- as disability compensation and as such, the same cannot be found fault with.



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12. As already pointed out, the first respondent/claimant was aged 13 years and was only studying 6th standard at the time of accident. Considering the nature of the injuries, more importantly, crush injury on her left leg and other multiple injuries, awarding Rs.1,50,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities, Rs.25,000/- towards extra nourishment, Rs.25,000/- towards transport charges and Rs.1,000/- towards damages for clothes and other articles are very much reasonable and the same cannot said to be excessive. Moreover, the Tribunal, taking note of the bills produced and exhibited and also taking note of the fact that the appellant/insurer did not dispute the medical bills through evidences, has rightly granted Rs.2,15,889/- towards medical expenses. Considering the above, the total compensation awarded at Rs.10,66,889/- is reasonable and as such, this Court is not inclined to interfere with the same. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

13. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.



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14. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/insurer is directed to deposit the compensation amount as awarded by the Tribunal with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.5443 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court for MCOP Cases, Tiruchirappalli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant, who has attained majority, is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

**30.04.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm



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- To
1. The Motor Accident Claims Tribunal/  
Special Subordinate Court for MCOP Cases,  
Tiruchirappalli.
  2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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**Pre-Delivery Judgment made in**  
C.M.A.(MD)No.773 of 2018  
and  
C.M.P.(MD)No.8716 of 2018

**Dated : 30.04.2024**