

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.09.2018

JUDGMENT PRONOUNCED ON : 12.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1364 of 2011

Minor Malli @ Malliga  
rep-by her guardian father  
Sankar .....Appellant /Petitioner

Vs

1.Chairman,  
Kuppusamy Memorial Educational Trust,  
SKP engineering College,  
No.190, Chengam Road,  
Tiruvannamalai.  
2.Divisional Manager,  
United India Insurance Company Ltd.,  
No.46, Katpadi Road,  
Vellore. ....Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.01.2010 made in M.C.O.P. No. 40 of 2006 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge) Tiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents : R1- Mr.D.Bhaskaran  
: R2- Ex-Parte

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J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thiruvannamalai. In M.C.O.P.No. 40 of 2006 dated 18.01.2010, the appellant who is the claimant filed this Civil Miscellaneous Appeal seeking the relief of enhancing the compensation awarded by the tribunal.

2) For the sake of convenience the parties are referred to, as per their litigative status before the tribunal. It is a case of injury.

The case of the petitioner is as follows:

3) On 07.04.2005 at about 04.00 p.m. when the appellant minor girl by name Malli @ Mallika was riding her mini bicycle on Begapuram main road Thiruvannamalai, near Ragavendra eye hospital, a van bearing registration No.TN 25 C 3076 owned by the 1<sup>st</sup> respondent, insured with the 2<sup>nd</sup> respondent came from south direction and hit against the mini bicycle and thereby caused the accident. The rash and negligent act of the van driver alone is the reason for the accident. Due to the accident, the minor girl sustained multiple injuries and bone fracture all over the body. She was admitted in Government Additional Hospital, Thiruvannamalai. As a result of an accident, she was unable to continue her school studies. Her parents have spent huge amount towards the medical expenses. So, she filed a claim petition claiming Rs.1,00,000/- as a total compensation.

4) The 1<sup>st</sup> respondent remained ex-parte. Opposing the claim made by the claimant, the 2<sup>nd</sup> respondent filed a counter and contended that, during the time of accident the minor girl had suddenly crossed the road without noticing the incoming vehicles on the southern side of the road. The driver of the offending vehicle is not having any valid and effective driving licence. According to him, the petitioner has suffered only simple injuries. The disabilities now stated by the petitioner are imaginary one.

5) Before the tribunal, the father of the minor girl Sankar examined himself as P.W.1. The Doctor who issued the disability certificate to the injured was examined as P.W.2. Further, on the side of the petitioner 8 documents were marked as Exs.P1 to P8. On the side of the respondent none have been examined and no documentary evidence was adduced to prove his case. After, careful analysis of the evidence, let in by either side, the tribunal held that the negligence of the 1<sup>st</sup> respondent driver alone is the reason for the accident and passed the award for a sum of Rs.72,000/- payable by the 2<sup>nd</sup> respondent along with the interest at the rate of 7.5% per annum. Aggrieved over the said finding of the tribunal, the claimant / injured has come forward with this Civil Miscellaneous Application for enhancing the compensation awarded by the Claims Tribunal.

6) The learned counsel appearing for the claimant would contend that the tribunal without considering the nature of

injuries sustained by the minor girl and about the permanent disability suffered by the petitioner awarded a meager amount as a compensation. The tribunal has not awarded any amount under various heads. On the other hand, the learned counsel appearing for the respondent would contend that the tribunal correctly appreciated the evidence and awarded a just compensation. According to him, the compensation determined by the claim tribunal is found correct.

7) This appeal is quantum appeal, both sides have not advanced any arguments, in respect of negligence aspect, the tribunal carefully analyzed the oral evidence of P.W.1 and P.W.2 and also considering the contents of the Ex.P1, concluded that the negligence of the 1<sup>st</sup> respondent vehicle driver alone caused the accident. The same has been corroborated through the Ex.P2 Motor Vehicle Inspection Report, Ex.P3 Motor Vehicle Report. More over, in the Claims Tribunal the copy of the Judgment passed in STC 863 of 2005 was marked as Ex.P6, in which the driver of the 1<sup>st</sup> respondent admitted the offence. Further, in order to deny the said aspects, none have been examined on the side of the respondents, denying the negligence of van driver and about the liability of the 2<sup>nd</sup> respondent.

8) It is an admitted fact that, at the time of an accident the claimant was aged about 12 years. She was a school going girl. As per the evidence given by P.W.2., she suffered 32% permanent partially disability and after the accident, she is unable to walk normally and she can walk only with the help of waking stick. Since, the petitioner is a teen age girl, as a result of the disfigurement and deformity caused on her right thigh would necessarily create a serious impact. Even though, the compensation for the permanent disabilities is calculated through the multiplier method. Considering the age of the claimant and the evidence given by Doctor, due to the accident the injured had not facing any permanent disability. She suffered only by partial permanent disability. However, in the Claims Tribunal Rs.3,000/- alone was awarded under the head of transportation expenses, other medical expenses, extra nourishment, etc. Further, Rs.1,500/- alone was paid under the head of pain and sufferings. The said amount is marginally very very low. The alleged accident was happened in the year of 2005, and in the accident, sustained only one fracture to the claimant. So, I am of the considered opinion that 25% of the disability has been taken into account for considering the compensation to the disability suffered by the injured. Further Rs.2,000/- is the appropriate amount 25% percentage of disability. Accordingly, it would appropriate to fix the compensation in the following manner:-

| SL.NO | PARTICULARS                                                       | Awarded by<br>the Claim<br>Tribunal | Awarded by<br>this Court |
|-------|-------------------------------------------------------------------|-------------------------------------|--------------------------|
|       |                                                                   | AMOUNT (IN.RS)                      |                          |
| 1.    | Towards permanent partial disability 25% at the rate of Rs.2000/- | 67,500.00                           | 50,000.00                |
| 2.    | Towards pain and sufferings                                       | 1,500.00                            | 15,000.00                |
| 3.    | Towards Transportation                                            | 3,000.00                            | 5,000.00                 |
| 4.    | Towards extra nourishment                                         |                                     | 10,000.00                |
| 5.    | Other Medical Expenses                                            |                                     | -                        |
| 6.    | Towards loss of amenities                                         |                                     | 5,000.00                 |
| 7.    | Towards Loss of amenities                                         | -                                   | 5,000.00                 |
| 8.    | Future Treatment                                                  | -                                   | 10,000.00                |
|       | Total                                                             | 72,000.00                           | 1,00,000.00              |

9) Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.1,00,000/- . The rate of interest awarded by the Claim Tribunal 7.5% per annum is unaltered. The 2<sup>nd</sup> respondent Insurance Company is directed to pay the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

10) In the result, the Civil Miscellaneous appeal is disposed of. There shall be no order as to costs.

Sd/-  
Assistant Registrar(CS II)

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Sub Assistant Registrar



sbn

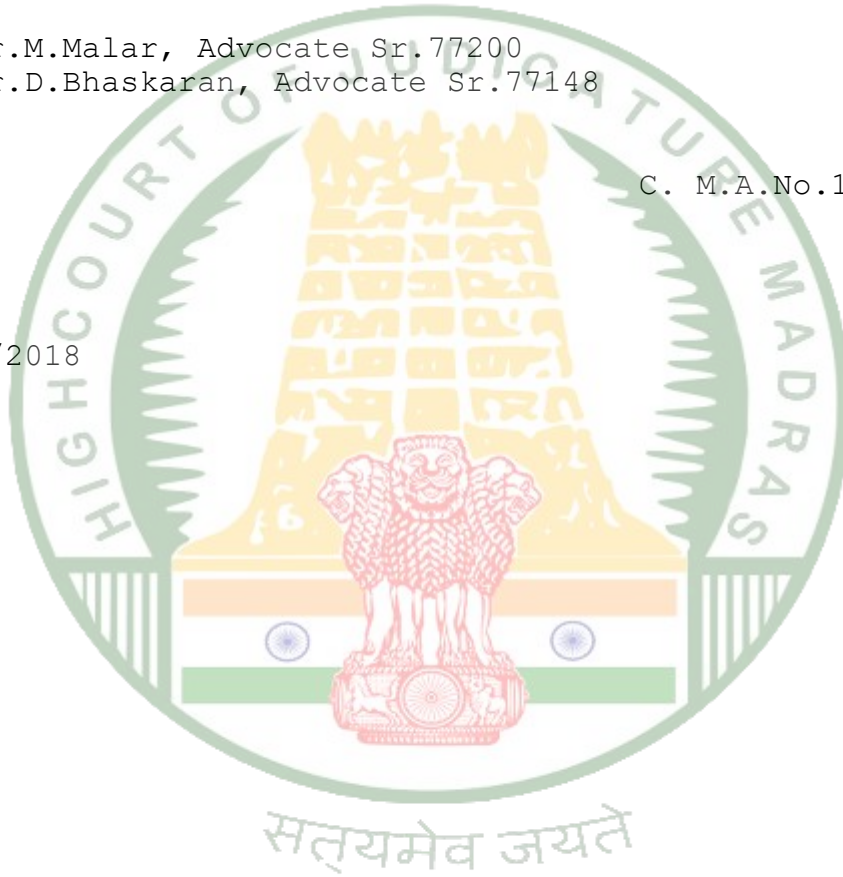
To

- 1.The Principal Sub Judge,  
Motor Vehicle Accident Claims Tribunal,  
Tiruvannamalai.
- 2.The Section Officer,  
VR Section, High Court, Madras.(2 Copies)

+1cc to Mr.M.Malar, Advocate Sr.77200  
+1cc to Mr.D.Bhaskaran, Advocate Sr.77148

C. M.A.No.1364 of 2011

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srg 24/12/2018



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