



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD).No.739 of 2019

WEB COPY

Minor Radhika Bharathi
(rep. by her mother and Natural Guardian
Muthamilselvi) ... Appellant / claimant

Vs.

1. Deepa
2. The Divisional Manager,
New India Assurance Company Limited,
Market Road,
Thanjavur. .. Respondents/respondents

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award dated 10.08.2018 passed in MCOP.No. 318 of 2018, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur.

For appellant : Mr. G. Karnan
For 2nd respondent : Mr.K. Murugesan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant / claimant against the Award dated 10.08.2018 passed in MCOP.No. 318 of 2018, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur.

2. This is a case of injury. On 18.01.2018 at about 10.45 hours, while the appellant / claimant (minor) was travelling along with his family members in the Car bearing Reg.No. TN 02 AQ 0250 on Pullor Koot Road near Ulundurpettai, a Lorry bearing Regn. No. TN 70 M 1038, driven by its driver came in the opposite direction in a rash and negligent manner and dashed against the car. Due to the accident, the appellant / claimant sustained multiple injuries. Hence, she filed a claim petition seeking compensation of Rs.10,00,000/-. The Tribunal has awarded a sum of Rs.2,17,837/- as total compensation. Against the said Award, the appellant / claimant has filed the present appeal for enhancement of compensation on the ground that the amount awarded by the Tribunal is very low in all the heads.



3. The Tribunal has awarded compensation to the appellant / claimant in the manner stated below:

S.No.	Heads	Amount
1.	Pain and suffering	60,000.00
2.	Loss of amenities	30,000.00
3.	Medical Expenses	1,01,837.00
4.	Food and Nutrition	10,000.00
5.	Attendant Charges	10,000.00
6.	Transportation Charges	6,000.00
	Total	2,17,837.00

4. The learned counsel appearing for the appellant / claimant contended that the disability of the claimant was assessed by the Doctor as 41% and the disability certificate has been marked as Ex.P47. The Doctor, who issued the disability certificate was also examined and he categorically stated that the claimant sustained 41% disability. However, the Tribunal has not awarded any amount towards disability stating that the appellant is already a disabled person due to Polio attack. Further, the learned counsel submitted that even the compensation awarded under various other heads are low and requires appropriate enhancement.

5. The learned counsel appearing for the 2nd respondent / Insurance Company submitted that since the appellant already suffered by Polio attack and she is a handicapped person, the Tribunal has rightly considered the said aspect and declined to award any amount towards disability.

6. This Court considered the submission made by the learned counsel appearing on either side and perused the records.

7. The Tribunal failed to award any amount towards disability to the appellant. The Tribunal has stated that there is no need to award any compensation towards disability, on the ground that the appellant was a disabled person even before the accident. Therefore, the Tribunal refused to award any amount towards disability. However, this Court is not in a position to accept the findings of the Tribunal on this aspect. If a disabled person is met with an accident and he has sustained grievous injuries, in such case, the Court has to take a lenient view, as the disabled person has further become disabled due to the accident. On the contrary, the Tribunal in a hard-hearted manner, declined to award any compensation for a disabled person, who met with an accident. The said findings are liable to be set aside due to the reason that the



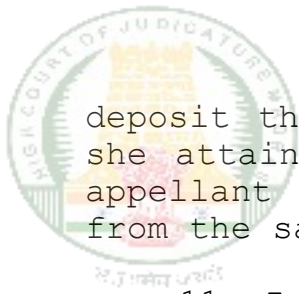
same was given due to non application of mind and without appreciating the nature of injuries sustained by the claimant/disabled person. Therefore, this Court is inclined to award a sum of Rs.3,000/- towards per percentage of disability. The Doctor assessed the disability at 41%. Therefore, this Court is inclined to award a sum of Rs.1,23,000/- (i.e. Rs.3,000/- x 41%) towards disability to the appellant.

8. No doubt, the appellant/claimant sustained grievous injuries and he has undergone surgery, and screws and plates were fitted in his body and for the removal of the said screws and plates, he has to undergo medical treatment in future. But the Tribunal failed to award any amount towards future medical expenses. Hence, for the expenses to be incurred towards removal of screws and plates, this Court is inclined to award Rs.40,000/- and a sum of Rs.30,000/- towards future medical expenses. In all other aspects the amount awarded by the Tribunal is hereby confirmed.

9. Accordingly, the amount awarded by the Tribunal is hereby enhanced from Rs.2,17,837/- to Rs.4,10,850/- together with interest at 7.5% per annum from the date of petition till date of deposit in the manner stated below:

S.No.	Heads	Amount
1.	Pain and suffering	60,000.00
2.	Loss of amenities	30,000.00
3.	Medical Expenses	1,01,837.00
4.	Food and Nutrition	10,000.00
5.	Attendant Charges	10,000.00
6.	Transportation Charges	6,000.00
7.	Removal of screws and plates	40,000.00
8.	Future Medical Expenses	30,000.00
9.	Partial Permanent Disability	1,23,000.00
	Total	4,10,837.00 r/o. Rs.4,10,850/-

10. The 2nd respondent / Insurance Company is directed to deposit the entire award amount of Rs. 4,10,850/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs to the credit of MCOP.No. 318 of 2018, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of copy of this order. On such deposit, the Tribunal is directed to



deposit the said amount in any one of the Nationalized Banks till she attains majority, on re-investment scheme. The mother of the appellant / claimant is entitled to withdraw the interest accrued from the said deposit once in three months directly from the Bank.

11. In fine, this Civil Miscellaneous Appeal is partly allowed.
No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To
The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Thanjavur.

+1 CC to M/s.G.KARNAN, Advocate (SR-95206[F] dated 31/10/2019)
+1 CC to M/s.K.MURUGESAN, Advocate (SR-95171[F] dated 31/10/2019)

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