

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 1044 & 1045 of 2011

Swathi
(declared as major and her father and next friend
Suresh discharged from guardianship vide
order of this Court dated 13.11.2019
made in C.M.A. Nos. 1044 and 1045 / 2011) ... Appellant/Petitioner
in C.M.A. No. 1044 of 2011

T. Rani ... Appellant /Petitioner
in C.M.A. No. 1045 of 2011

Vs.

1.D. Thiagarajan Dhanasingh
(R1 set exparte before the Tribunal)

2.The National Insurance Co. Ltd.,
Motor Third Party Claim Cell,
No. 751, Anna Salai,
Chennai 600 002. ... Respondents /Respondents
in both the appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
award dated 25.06.2010, made in M.C.O.P. Nos. 3029 & 3039 of
2005, on the file of the III Court of Small Causes, (Motor
Accident Claims Tribunal), Chennai.

For Appellant : Mr. F. Terry Chellaraja
for M/s. A. Ashok Kumar
(In both appeals)

For Respondents: Mr. S. Vadivel
(For R2 in C.M.A. No. 1044/2011)

Ms. K. Saraswathi
for M/s. R. Krishnamoorthy
(For R2 in C.M.A. No. 1045/2011)

C O M M O N J U D G M E N T

These appeals have been filed seeking enhancement of the compensation granted by the common award dated 25.06.2010, made in M.C.O.P. Nos. 3029 & 3039 of 2005, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellants in both the appeals are claimants in M.C.O.P. Nos. 3029 & 3039 of 2005, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. They filed the said claim petitions, claiming a sum of Rs.20,00,000/- and Rs.3,00,000/- as compensation for the injuries sustained by them in the accident that took place on 31.10.2004.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Auto Rickshaw belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.10,14,355/- and Rs.91,915/- as compensation to the appellants in both the appeals respectively.

5.Not being satisfied with the amounts awarded by the Tribunal in the common award dated 25.06.2010, made in M.C.O.P. Nos. 3029 & 3039 of 2005, the appellants have come out with the present appeals respectively.

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6.Learned counsel appearing for the appellant contended that the Tribunal failed to properly consider evidence let in by the appellant and documents filed by her. The appellant was aged 6 years at the time of accident. She suffered major crush injury in the left hand with loss of skin, tendon and bone and a deep abrasions on the face and the right elbow and has taken treatment as in-patient for 43 days in 5 different spells, underwent 6 surgeries for bone grafting, and skin grafting. To substantiate the same, the appellant examined P.W.3 and P.W.4 - Doctors, who certified that the appellant suffered 30% and 35% disability, totaling to 65% disability. The Tribunal erroneously reduced the percentage of disability suffered by the appellant to 45% and awarded meagre amount as compensation. The Tribunal ought to have awarded compensation for 65% disability. The Tribunal ought to have awarded entire amount as claimed under the medical expenses. The Tribunal has not awarded any amount towards attendant charges, future prospects and ought to have granted more compensation towards transportation charges and

extra nourishment and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal has considered the nature of injuries suffered, treatment taken by the appellant, evidence of P.W.3 and P.W.4 Doctors in proper perspective, accepted the disability assessed by P.W.3 Doctor and reduced the disability assessed by P.W.4 Doctor by giving valid reason and awarded compensation for 100% disability by fixing the annual income as Rs.15,000/-, by applying the multiplier method. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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8.Learned counsel appearing for the appellant contended that in the accident, the appellant sustained tenderness over right chest wall, contusion over the right chest and has taken treatment as inpatient for a period of 12 days in various Hospitals. She has proved the same by examining P.W.3- Doctor who assessed the percentage of disability suffered by the appellant as 15%. The Tribunal ought to have awarded compensation towards disability at the rate of Rs.2,000/- per percentage, instead of Rs.1,000/- per percentage. The Tribunal ought to have awarded entire amount as claimed under the medical expenses. The Tribunal has not awarded any amount towards attendant charges, future prospects, loss of amenities and damage to clothes and ought to have granted more compensation towards transportation charges, medical expenses, pain and suffering and extra nourishment and prayed for enhancement of the compensation.

9.Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal considering all the materials on record in proper perspective, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellants as well as the 2nd respondent in both the appeals and perused the materials available on record.

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11.It is the contention of the minor appellant that she sustained crush injury in the left ear, crush injury in the right side face, left elbow and abrasion of left knee and undergone 6 surgeries and has taken treatment as in-patient for a period of 43 days in different spells in Apollo Hospital, Chennai, viz., from 01.11.2004 to 22.11.2004, 01.03.2005 to

06.03.2005, 07.05.2005 to 12.05.2005, 10.12.2005 to 15.12.2005 and 24.09.2006 to 27.09.2006. She has substantiated the same by marking the discharge summaries as Exs. P12 to P15 and examining P.W.3 and P.W.4-Doctors. P.W.3 and P.W.4-Doctors deposed about the nature of injuries, treatment taken and disability suffered by the appellant and certified that the appellants suffered 30% and 35% disability respectively. The Tribunal considering the evidence of P.W.3-Doctor, accepted the entire percentage of disability assessed by him as 30%. As far as the disability assessed by P.W.4 - Doctor is concerned, the Tribunal taking note of the evidence of P.W.4 - Doctor, accepted the disability for deformity and abdominal scar and fixed the percentage of disability as 15%. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have awarded compensation for entire 65% disability is without merits. A reading of the award of the Tribunal shows that the Tribunal has granted compensation for 100% disability by fixing the annual income of the appellant as Rs.15,000/- and applying the multiplier '15' as per II Schedule of the Motor Vehicles Act, 1988. The Hon'ble Apex Court and this Court in number of cases taking into consideration the passage of time in enacting II Schedule and the date of accident, has fixed the annual income as Rs.30,000/- and in some cases, Rs.45,000/- and Rs.60,000/-. In the present case, the accident is of the year 2004 and it will be just and reasonable if income of the appellant is fixed at Rs.30,000/- per annum and multiplier '15' is applied. By applying the multiplier '15', the compensation awarded by the Tribunal towards loss of income is modified as Rs.4,50,000/- [Rs.30,000/- x 15].

12.The appellant has taken treatment for a period of 43 days. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken, a sum of Rs.12,900/- [Rs.300/- x 43 days] is awarded towards attendant charges. Considering the age of the appellant and the nature of injuries suffered by her, the amount awarded by the Tribunal towards extra nourishment is enhanced to Rs.20,000/-. As far as the medical expenses is concerned, the appellant has produced medical bills worth Rs.4,70,918.91/- and Rs.1,92,750/- and marked the same as Exs.P19 and P25 respectively. The Tribunal found that some of the bills have advance payment and some had two serial numbers, rejected those bills and awarded Rs.5,44,355/- towards medical expenses, including the amount claimed by the appellant for physiotherapy treatment. The reason given by the Tribunal for rejecting some of the bills is valid. The appellant is not entitled for any enhancement of medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	2,25,000/-	4,50,000/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Medical expenses	5,44,355/-	5,44,355/-	Confirmed
5.	Future medical expenses	75,000/-	75,000/-	Confirmed
6.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
7.	Pain and suffering	50,000/-	50,000/-	Confirmed
8.	Attendant charges	-	12,900/-	Granted
	Total	10,14,355/-	12,62,255/-	Enhanced by Rs.2,47,900/-

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13. It is the contention of the appellant that in the accident, she sustained fracture in right ribs, contusion and multiple injuries. P.W.3 - Doctor has assessed the disability of the appellant as 15% and issued disability certificate which was marked as Ex.P30. The Tribunal considering the evidence of P.W.3-Doctor and the disability certificate issued by him, awarded a sum of Rs.15,000/- towards disability at the rate of Rs.1,000/- per percentage for 15% disability. The accident is of the year 2004. Considering the year of accident, the appellant is entitled to compensation towards disability at the rate of Rs.2,000/- per percentage for 15% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.30,000/- [Rs.2,000/- x 15%]. The appellant has taken treatment as in-patient at Apollo Hospital and subsequently, at Sri Ramachandra Hospital from 17.11.2004 to 20.11.2004 and from 29.11.2004 to 06.12.2004, for a period of 12 days. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken, the appellant is granted a sum of Rs.7,000/- towards attendant charges. The amounts awarded by the Tribunal towards pain and suffering and extra nourishment are meagre. Considering the nature of

injuries, the appellant is granted a sum of Rs.15,000/- towards pain and suffering and Rs.7,500/- towards extra nourishment. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	15,000/-	30,000/-	Enhanced
2.	Transportation	2,000/-	2,000/-	Confirmed
3.	Medical expenses	65,915/-	65,915/-	Confirmed
4.	Attendant charges	-	7,000/-	Granted
5.	Extra nourishment	2,000/-	7,500/-	Enhanced
6.	Pain and suffering	7,000/-	15,000/-	Enhanced
	Total	91,915/-	1,27,415/-	Enhanced by Rs.35,500/-

14. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.10,14,355/- and Rs.91,915/- are enhanced to Rs.12,62,255/- and Rs.1,27,415/- respectively along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos. 3029 & 3039 of 2005. On such deposit, the appellants in both the appeals are permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant in both the appeals are directed to pay the necessary Court fee, if any, on the enhancement amount of Rs.2,47,900/- and Rs.35,500/- respectively. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

gsa

To

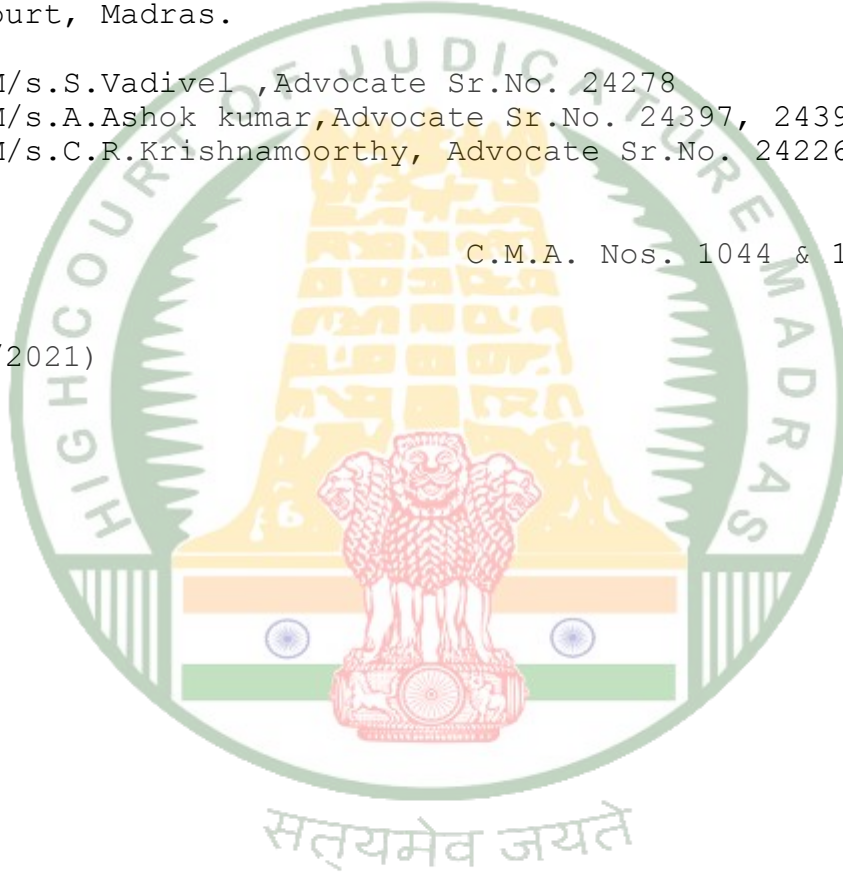
1.The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1 cc to M/s.S.Vadivel ,Advocate Sr.No. 24278
+2 cc to M/s.A.Ashok kumar,Advocate Sr.No. 24397, 24396
+1 cc to M/s.C.R.Krishnamoorthy, Advocate Sr.No. 24226

C.M.A. Nos. 1044 & 1045 of 2011

RSV(CO)
RMP (07/01/2021)



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