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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.207 of 2014

Minor. Faathiha
(Represented by her mother
Ragamathinisa @ Mumtaj)

..Appellant/Petitioner

Vs.

1.Mangalam
(R1 remained exparte before the Tribunal
and hence, notice to R1 is dispensed with)

2.ICICI Lombard General Insurance Co. Ltd.
No.140, Nungambakkam High road
Chennai-600 034.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2013 made in M.C.O.P.No.2456 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For R2 : Mrs.R.Sreevidhya
R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 30.07.2013 made in M.C.O.P.No.2456 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.2456 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. The minor represented by her mother filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 09.07.2008.

3.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 Tata Ace belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tata ace to pay a sum of Rs.1,19,000/- as compensation to the appellant.

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4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant was aged 12 years at the time of accident and was studying VI standard. The appellant suffered head injury, nasal bone fracture and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P10 to prove the injuries. The Tribunal erred in reducing the disability to 45% and awarded only a meagre sum of Rs.90,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal ought to have fixed the disability of the appellant as 100% and awarded compensation towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials available on record, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that she suffered head injury, nasal bone fracture and multiple injuries all over the body in the accident occurred on 09.07.2008. The appellant has taken treatment as in-patient in Krishna hospital, on 09.07.2008 & 10.07.2008 and subsequently, she has taken treatment as in-patient in Jipmer hospital from 14.07.2008 to 22.07.2008. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P10 to prove the injuries. The Tribunal reduced the disability to 45% on the ground that the disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.90,000/- (Rs.2,000/- X 45%) towards disability at the rate of Rs.2,000/- per percentage of disability. The respondents did not let in any oral and



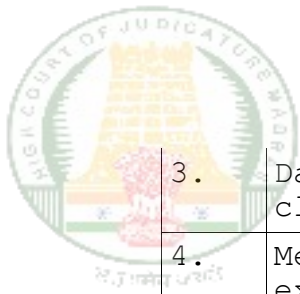
documentary evidence to disprove the disability assessed by P.W.2/Doctor and disability certificate marked as Ex.P10. Therefore, the appellant is entitled to compensation for 50% disability, as there is no contra evidence.

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8(i).As per the judgment of the Hon'ble Apex Court reported in 2014 (14) SCC 396 (Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. and another), the pecuniary damages for a minor cannot be worked out in the absence of income of the child and the child cannot be equated to non-earning member for fixing notional income as per the II Schedule. The Hon'ble Apex Court has held that consolidated compensation must be awarded for permanent disability on the basis of percentage of disability. If the disability is up to 10%, it should be Rs.1 lakh, above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. In the present case, the disability of the appellant is fixed at 50%. In view of the above judgment of the Hon'ble Apex Court, the appellant is entitled to a sum of Rs.4,00,000/- as compensation for 50% disability. The Tribunal has awarded a sum of Rs.5,000/-, Rs.4,000/-, Rs.2,000/- and Rs.10,000/- towards transportation, extra nourishment, attendant charges and pain & suffering respectively. Considering the age of the appellant, nature of injuries and the period of treatment taken by the appellant, the compensation awarded by the Tribunal towards transportation, extra nourishment, attendant charges and pain & suffering are enhanced to Rs.10,000/-, Rs.15,000/-, Rs.15,000/- and Rs.20,000/- respectively. The amounts awarded by the Tribunal towards damage to clothes and medical expenses are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.	Transportation	5,000	10,000	Enhanced
2.	Extra nourishment	4,000	15,000	Enhanced



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3.	Damage to clothes	1,000	1,000	Confirmed
4.	Medical expenses	7,000	7,000	Confirmed
5.	Attendant charges	2,000	15,000	Enhanced
6.	Pain and suffering	10,000	20,000	Enhanced
7.	Permanent disability at 50%	90,000	4,00,000	Enhanced
	Total	1,19,000	4,68,000	Enhanced by Rs.3,49,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,19,000/- is hereby enhanced to Rs.4,68,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the award of the minor appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the minor appellant viz., Ragamathinisa @ Mumtaj, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

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



Copy to
The Section Officer
V.R.Section
High Court, Chennai.

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+1 CC to Mrs.R. Sreevidhya, Advocate sr 24038
+1 CC to Ms.M. Malar, Advocate sr 23911.

C.M.A.No.207 of 2014

GJ(CO)
SP(31/08/2021)