IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3202 of 2011

Minor Mahalakshmi @ Indhu,
D/o Ramesh, minor rep. by her
next friend and father Ramesh. ...Appellant/claimant

Vs.

1. P. Krishnan

2. The Branch Manager,
National Insurance Company Ltd.,
Branch office, 1 floor,
Sharadamma Buildings,
Bye Pass Road, Hosur.

3. S. Kalpana ...Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 18.11.2010 passed in M.C.O.P.No.1909 of 2003 by the Chief Judidical Magistrate, Motor Accident claims Tribunal, Krishnagiri.

For Appellant	:	Mr.Mukund R.Pandiyan
For II respondent	:	Mr.K.Padmanabhan
For I respondent	:	No appearance
For III Respondent	:	Notice unserved

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the claimant is before this court to enhance the compensation awarded by the Tribunal.

2. The claimant, minor, represented by her father has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 18.05.2002.

3. The brief case of the claimants is as follows: On 18.05.2002, at 12.45 hours, the claimant was walking on the left side road in the Krishnagiri-Varattanpalli Road and while she nearing Katinayanapalli Bus stop, a speedy Tata sumo Car bearing registration No.TN-45-V-4467 coming from opposite side, dashed

against the claimant, thereby she sustained grievous injuries and immediately she admitted to Government Hospital, Krishnagiri for initial treatment and then admitted to St.Johns Hospital, Bangalore for better treatment and she was treated as inpatient from 18.05.2002 to 30.05.2002. According to the claimant, the rash and negligent driving of the driver of the Tata Sumo car was the cause of accident and since the first respondent/ owner of the vehicle insured his Tata Sumo car with the second respondent/ insurance company and at the time of accident, the car was being in possession of the third respondent, all of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent/ insurance company by filing counter affidavit.

5. Before Tribunal, the father of the claimant and Dr.D.V.Gandhi were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P9 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,19,030/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Disablement (2000 x 40)	80,000
2	Pain and sufferings	25,000
3	Medical bills	6,730/-
4	Taxi bills	2,300
5	Attender's charges and extra nourishment	5,000
	Total	1,19,030

Not satisfied with the compensation awarded by the Tribunal, the claimant has filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the insurance company and I have perused the materials on record.

8.The learned counsel appearing for the appellant submitted that at the time of accident, the claimant was only aged 4 years and the wound certificates, discharge summary and the medical bills were marked as Ex.P2 to Ex.P5, however without considering the documents and the grievous injuries sustained by her, the Tribunal has awarded only a sum of Rs.25,000/- towards " pain and sufferings ".He further submitted that though the doctor, who was examined as PW2, has assessed the disability suffered by the claimant as 45%, as per the disability certificate Ex.P8, the Tribunal, without any basis has fixed only at 40%, which is unfair and awarded a meagre amount. Further, the amounts awarded under the other heads are also very meagre and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted that after analysing the evidence on record, the Tribunal has awarded a just and reasonable compensation and hence, it does not warrant any interference by this court.

10.Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced?

11. Point

A perusal of the documents marked before the Tribunal shows that Ex.P2 and Ex.P3 are the wound certificates and Ex.P4 is the discharge summary. The Disability Certificate was marked as Ex.P8, wherein, the Doctor D.V.Gandhi, who was examined as PW2 had assessed the disability suffered by the claimant as 45%. However, without any reason, the Tribunal has fixed at 40%, which is unsustainable. This court accept the contention of the appellant and fixed the disability suffered by the appellant as 45% and a sum of Rs.2,000/- per percentage is awarded, thereby a sum of Rs.90,000/- is awarded towards "Disablement". At the time of accident, the claimant was minor, aged 4 years. This fact is not disputed by the insurance company. Considering the age of the claimant and the nature of injuries sustained by her, this court is inclined to enhance the compensation towards " Pain and sufferings" to Rs.40,000/-.Besides, a sum of Rs.5,000/- is also awarded towards " Loss of amenities". Accordingly, The revised compensation awarded under various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation Awarded/ enhanced by this court
1	Disablement	80,000	90,000
2	Pain and sufferings	25,000	40,000
3	Medical bills	6,730	6,730
4	Taxi bills	2,300	2,300
5	Attender's charges and extra nourishment	5,000	5,000
6	Loss of amenities	-	5,000
	Total	1,19,030	1,49,030

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,19,030/- to Rs.1,49,030/-. No costs.

(ii) The insurance company is directed to deposit the enhanced compensation of Rs.1,49,030/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

The Chief Judicial Magistrate
Motor Accident Claims Tribunal,
Krishnagiri

Copy To

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

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.9710

CMA. No.3202 of 2011

GJ (CO)
RGA(08/12/2021)