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C.M.A.(MD)No.1057 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.08.2021

Delivered On : 27.08.2021

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.1057 of 2014

and

M.P.(MD)No.1 of 2014

The Bajaj Allianz General Insurance Co. Ltd.,  
G.V.R.Complex 6\_A, 2<sup>nd</sup> Floor,  
Lawsons Road, Cantonment,  
Trichy.

..Appellant/2<sup>nd</sup> Respondent

Vs.

1.Minor Illanjeyam

Rep. By her father and guardian Mahalingam

2.M.Balasubramanian

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 03.03.2014 made in M.C.O.P.No.3020 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Trichy.

|                                |                  |
|--------------------------------|------------------|
| For Appellant                  | : Mr.G.Maruthiah |
| For 1 <sup>st</sup> Respondent | : Mr.A.Anandan   |
| For 2 <sup>nd</sup> Respondent | : No Appearance  |

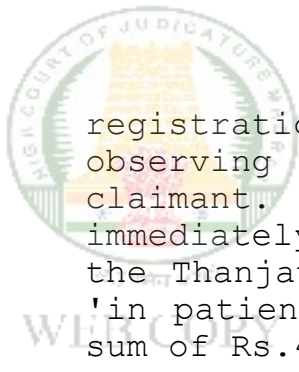
### JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.3020 of 2013 dated 03.03.2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Trichy.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.3020 of 2013, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 23.11.2010. The Tribunal has awarded a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.3020 of 2013 is as follows:

On 23.11.2010 at about 04.30 p.m., the minor claimant was standing in front of the school. At that time, the first respondent's driver started the vehicle TATA ACE car bearing



registration No.TN-61-A-1150 in a rash and negligent manner without observing the children standing nearby, dashed against the minor claimant. The claimant sustained grievous injuries and she was immediately taken to a private hospital and then she was taken to the Thanjavur Medical College hospital, where she took treatment as 'in patient' from 23.11.2010 to 30.11.2010. The claimant claimed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The first respondent remained exparte. The manner of accident as set out in the petition is wrong. The claimant tried to climb the moving the vehicle and she lost her balance and fell down. The driver of the first respondent is no way responsible for the accident. The age, nature of injuries, treatment, disability and medical expenses are to be proved. The second respondent is not liable to pay any compensation to the claimant. The claim amount is excessive.

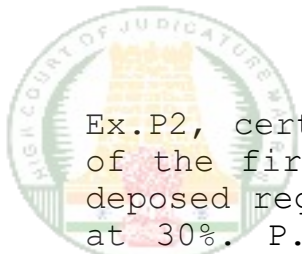
5.On the side of the petitioner, 2 witnesses were examined and 7 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation to be paid by the second respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the claimant has fixed only partial permanent disability. There is no functional disability. The Tribunal failed to consider the judgment of the Apex Court in the case of **Master Mallikarjun v. Divisional Manager, National Insurance Company Limited** reported in **2013 (2) TNMAC 338**. The claimant sustained 30% of partial permanent disability and the award is excessive. The Tribunal has fixed the disability at 28% but has awarded Rs.3,00,000/- (Rupees Three Lakhs only) as compensation and prayed the amount to be reduced.

7.On the side of the first respondent, it is stated that the claimant was minor aged about 10 years. The driver has admitted his guilt and the criminal Court judgment was marked as Ex.P4. The claimant has to undergo another surgery. She has undergone prolonged treatment.

8.On the side of the appellant, it is stated that the claimant has not undergone any surgery and there is no document to prove that the claimant undergone surgery and there is no proof that the claimant has undergone continuous treatment.

9.From Ex.P1, FIR and Ex.P4, criminal Court judgment and <https://hcservices.ecourts.gov.in/hcservices/>



Ex.P2, certified copy of M.V. Report, it is decided that the driver of the first respondent is responsible for the accident. P.W.2 has deposed regarding the nature of injuries and he fixed the disability at 30%. P.W.2 has admitted that after continuing treatment, there was possibility for the disability to reduce to 2% to 3%. The Tribunal is reasonable in fixing the disability as 28%. A sum of Rs.84,000/- (Rupees Eighty Four Thousand only) was awarded for the disability and the same is reasonable.

10.For pain and suffering, a sum of Rs.50,000/- (Rupees Fifty Thousand only), for frustration and deprivation of pleasure and enjoyment, a sum of Rs.50,000/- (Rupees Fifty Thousand only) and for inconvenience or discomfort arising out of disability, a sum of Rs.50,000/- (Rupees Fifty Thousand only) was awarded by the Tribunal.

11.Considering the situation of the claimants, a sum of Rs.60,000/- (Rupees Sixty Thousand only) towards pain and sufferings, a sum of Rs.60,000/- (Rupees Sixty Thousand only) towards frustration and deprivation of pleasure and enjoyment and a sum of Rs.56,000/- (Rupees Fifty Six Thousand only) towards inconvenience or discomfort arising out of disability is awarded. In total, a sum of Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) is awarded as compensation.

12.In the result, this Civil Miscellenaous Appeal is partly allowed. The first respondent herein is entitled to a sum of Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The appellant is directed to deposit Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

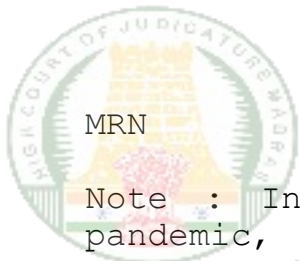
Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)



MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal,  
Special Sub Judge,  
Trichy.

2.The Section Officer, (2C)  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

C.M.A. (MD)No.1057 of 2014  
27.08.2021

DJ(CO)  
KB(16.09.2021) 4P 4C