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C.M.A.No.755 of 20



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 17.02.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

**C.M.A.No.755 of 2018**

Minor Aravinth,  
Rep by next friend and guardian  
Mother Suganthi,  
Arunthathiyar Street,  
Udupudam Pudur, Sankarai Taluk,  
Salem District.

... Appellant

Vs.

1. Murali Transports,  
Kavarai Street, Salem. (given up)

2. The New India Assurance Company Ltd.,  
No.7, Ramalinga Mudaliyar Street,  
Gugai, Salem.

...Respondents

**Prayer:** The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree passed in M.C.O.P.No.254 of 2005, dated 09.10.2006, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankari.

For Appellant : Mr.C.Kulanthaivel

For R1 : Set ex-parte before the Tribunal

For R2 : Mr.J.Chandran



## **JUDGMENT**

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The appellant herein was the petitioner in M.C.O.P.No.254 of 2005, on the file of the Motor Accidents Claims Tribunal/Sub Court, Sankari.

2. The appellant is aggrieved by the award dated 09.10.2006, passed in the said M.C.O.P.No.254 of 2005 for the injuries suffered in the accident by her minor son Aravind who was aged about 4 years at the time of accident. It was stated that on 12.03.2005 at around 3.30 p.m., the child suffered grievous injuries owing to a accident due to the rash and negligent driving of a bus bearing Registration No.TN 29 P 1679 in Rasipuram to Salem Road, near Agaram Nagar. It is stated that due to the accident, the child was completely disabled and could not go to school and he was continuing with take treatment even at the time of filing of petition before the Tribunal. Therefore, a claim petition was filed before the afore mentioned Tribunal seeking compensation.

3. On consideration of the evidence adduced and the facts and circumstances, the Tribunal had granted a sum of Rs.30,000/- as compensation. Aggrieved by the said amount of compensation awarded by the



Tribunal, the child, represented by his mother, has filed present Civil Miscellaneous Appeal before this Court.

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4. The learned counsel for the appellant placed reliance on the Judgment of the Hon'ble Supreme Court reported in **2013 (2) TN MAC 338 (SC) [Master Mallikarjun vs. Divisional Manager, National Insurance Company Limited and another]**. The relevant paragraphs of the said judgment reads as follows:

*“8.While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary*



*pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.*

*12.Though, it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is 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. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick.”*

5. The aforementioned judgment was also followed by a learned Single



Judge of this Court in ***C.M.A.No.292 of 2018, dated 21.03.2018 [Minor Gangadharan, represented by the next friend/mother Subbulakshmi versus P.Valliappan and other.]***

6. In the instant case, the Doctor who had assessed the injuries, has opined that the child had suffered 14% disability. As per ***Master Mallikarjun case, (supra)*** a sum of Rs.3,00,000/- has to be granted towards disability to the minor appellant/claimant, since the minor appellant/claimant suffered 14% disability. In view of that fact, taking into consideration, the said judgment of the Apex Court, a sum of Rs.3,00,000/- is granted as total compensation, which includes all the other heads also.

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,000/- is hereby enhanced to Rs.3,00,000/- [Rupees Three Lakhs only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit 50% of 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 to the credit of M.C.O.P.No.254



of 2005. On such deposit, the guardian of the minor appellant is permitted to withdraw the same along with accrued interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal.

The balance 50% of the enhanced award amount is to be deposited in any one of the Nationalized Banks, in any interest bearing Fixed Deposit Scheme till the minor appellant/claimant attains majority. On such deposit, the guardian of the minor appellant viz., Suganthi,, being the mother of the minor appellant/claimant is permitted to withdraw the accrued interest thereon once in three months for the welfare of the minor appellant/claimant. Since this Court had enhanced the compensation, the guardian of the minor appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the Award of the Tribunal shall stand confirmed. It is made clear that the appellants are not entitled to any interest for the delay period as per the order of this Court dated 15.03.2018 made in M.P.No.1 of 2010 in C.M.A.SR.No.89260 of 2009. There shall be no order as to costs in the present appeal.

**17.02.2022**

ssi/dua

Index:Yes/No

Speaking Order : Yes/No



To

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- 1.The Subordinate Judge,  
Motor Accidents Claims Tribunal,  
Sankari.
- 2.The Section Officer,  
VR Section,  
High Court,  
Madras.



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**C.V.KARTHIKEYAN,J.,**

ssi

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