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CMA.No.2449 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2449 of 2013

1.N.M.Deepika

(minor rep by her father E.Nibalkar)

...Appellant

Vs

1.S.Sakthivel

2.Bajaj Allianz General Insurance Co., Ltd.,

No.25/26, Prince Towers, IV Floor, College Road,

Nungambakkam,

Chennai - 600 034.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.1962 of 2008 dated 27.03.2013 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

For Appellants : Ms.A.Salomi

For Respondents :Ex parte - R1

Mr.S.Arun Kumar for R2

J U D G M E N T

This appeal has been filed by the minor claimant seeking enhancement of compensation under the impugned award dated 27.03.2013



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passed by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai, in MCOP.No.1962 of 2008.

2. On 26.01.2008 while the deceased Manjula along with her husband and child/appellant and others were travelling as occupants in a car bearing Regn.No.TN-2-AV-4992 from Chennai to Samayapuram on National Highway, driven by Nibalkar, when it was nearing Shekhussainpet, the driver of the lorry bearing Regn.No.TN-41-Q-9784, drove the same in a rash and negligent manner in the same direction from behind and hit against the car. Due to the said impact, she sustained fatal injuries and her husband and the minor appellant also sustained injuries. Other persons in the car also sustained multiple injuries. The guardian of the minor appellant has filed a claim petition claiming a sum of Rs.3,00,000/-. The Tribunal adjudicated the issues with reference to the documents and evidences. The Insurance Company has defended their case. The Tribunal has awarded a total compensation of Rs.44,300/-.

3. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this



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appeal seeking enhancement.

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4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain and suffering	10,000/-
Transport to Hospital	2,000/-
Extra Nourishment	2,000/-
Medical Expenses	8300/-
Attender charges	2000/-
Partial Permanent disability	20,000/-
Total	44,300/-

5. Before the Tribunal, on the side of the Appellant/claimant examined two witnesses as PW1 and PW2 and filed fifteen documents which were marked as Ex.P1 to Ex.P15. On the side of the second respondent, two witnesses were examined as RW1 and RW2 and filed nine documents which were marked as Ex.R1 to Ex.R9.



6. Heard the learned counsel for the appellant and learned counsel for the second respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellant/Claimant submitted that the decree and Judgement of the Tribunal are against law, facts, evidence and probabilities of the case. The Tribunal has erred in fixing the partial and permanent disability though the Doctor has assessed the disability at 20% in Ex.P15. The Tribunal has granted Rs.10,000/- under the head of pain and sufferings; Rs.2000/- towards Transport; Rs.2000/- Extra Nourishment and Rs.20000/- towards partial permanent disability and they are on the lower side. It has not granted any amount for damages to clothes. In any event, the quantum of compensation fixed by the lower court to the injured minor appellant aged 2 years was inadequate. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.44,300/- and the said quantum is unreasonable. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent submitted that the compensation claimed by the appellant is highly excessive



and baseless. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the minor appellant/claimant and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal has relied upon Ex.P1/FIR, Ex.P11/copy of Accident Register; Ex.P12/Discharge summary; Ex.P15/Disability certificate of the appellant, the Tribunal has taken the age of the minor appellant as 2 years. Considering the age and nature of injuries sustained by the appellant, the Tribunal fixed Rs.10,000/- towards pain and suffering; Rs.2000/- towards Transport and Rs.2000/- towards extra nourishment and Rs.8300/- towards medical expenses as per medical bills; Rs.2000/- towards Attender charges and Rs.20,000/- towards partial permanent disability.

10. On perusal of records, it is seen that the Tribunal has not properly considered the evidences properly and the documents marked. Considering the age and gravity of the injuries sustained by the appellant and also the facts and circumstances of the case, this Court is of the considered view that



Rs.15000/- towards pain and sufferings, Rs.3000/- towards Transport are to be awarded; considering the period of treatment, a sum of Rs.3000/- is fixed towards Extra Nourishment. On perusal of the award, it is seen that the Tribunal has not awarded any amount towards damage to clothes for which she is entitled to. This court is inclined to award a sum of Rs.1000/- towards damages to clothes. Since the award granted under the heads of Medical expenses, Attender charges and partial permanent disability at Rs.8300/-, 2000/- and Rs.20000/- respectively, seems to be reasonable, no interference of this court is required under these heads.

11.The details of the enhanced compensation are as under:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain and suffering	15,000/-
Transport to Hospital	3,000/-
Extra Nourishment	3,000/-
Medical Expenses	8300/-
Partial Permanent disability	20,000/-
Damage to clothes	1000/-
Attender charges	2000/-



<i>Heads</i>	<i>Award Amount (Rs.)</i>
Total	52,300/-

12. Thus, the appellant/claimant is entitled to the enhanced compensation of Rs.52,300/-. It is made clear that for the enhanced amount of Rs.8000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. The second respondent is directed to deposit the award amount within a period of six weeks from the date of copy of this judgement and recover the same from the first respondent.

13.The Civil Miscellaneous Appeal is partly allowed. No costs.

14. The second respondent/Insurance Company is directed to deposit the enhanced compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to deposit the award amount along with accrued interest in any one of the Nationalised banks in re-investment scheme in the account of the minor appellant/claimant till she attains majority, through RTGS within a period of



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two weeks thereafter. No costs.

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A.A.NAKKIRAN.,J.
gv

To

- 1.The Motor Accident Claims Tribunal/
Chief Judge, Court of Small Causes) Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.

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