



C.M.A.No.403 of 2013

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

DATED: 12.06.2023

CORAM

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

C.M.A.No.403 of 2013

Minor Gayathri

Rep. by Guardian K.G.Kumar

.. Appellant

Vs.

1.Habib

2.The Oriental Insurance Co. Limited

No.75, Krishnan Street

Thiruvannamalai.

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 03.02.2004 made in MACTOP No.302 of 1997 on the file of the Motor Accident Claims Tribunal/ Principal Sub Judge, Thiruvannamalai.

For Appellant

: Mr.A.Subadra

For M/s.M.Malar

For Respondents

: Mr.N.Sampath for R2



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## J U D G M E N T

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The Award dated 03.02.2004 passed in MACTOP No.302 of 1997 on the file of the Motor Accident Claims Tribunal /Principal Sub Judge, Thiruvannamalai, is under challenge in the present Civil Miscellaneous Appeal.

2. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,88,750/- together with interest and costs to the minor Appellant/claimant which is detailed hereunder:

| <i><b>Heads</b></i>                 | <i><b>Award Amount<br/>(Rs.)</b></i> |
|-------------------------------------|--------------------------------------|
| Loss of Income<br>(15000x15x75/100) | 1,68,750/-                           |
| Annual Income                       | 15,000/-                             |
| Permanent Disability                | 5,000/-                              |
| <b>Total</b>                        | <b>1,88,750/-</b>                    |



3. Before the Tribunal, the father of the minor appellant/claimant

was examined as PW1 and the doctor, who treated the claimant was examined as PW2 and filed 6 documents which were marked as Ex.P1 to Ex.P6. On the side of the 2nd respondent/Insurance Company neither any witness was examined nor any document was marked.

4. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. At the time of accident, the injured was aged about 6 years and was a student of first standard and she has lost her career as her left leg was amputated by 7.5 cms and thus, her future will become in question. The Tribunal had failed to consider the nature of injuries sustained by minor claimant viz., contusion in the lower 1.3rd of the left leg in th complete anterior aspect of ankle joint with skin and muscle and tender exposed 30 cm x 20 cm x 3 cm in size and abrasion injury in the back of the left elbow joint. Initially, her left leg finger was



amputated and then, her foot was amputated, and finally to save her life, her left leg was amputated upto 7.5 cms which was deformed. Therefore, she had undergone 3 surgeries at her young age of 6 years. But the Tribunal has failed to award any compensation towards pain and suffering and also not awarded any compensation towards, damages to cloth and articles, transport expenses, extra nourishment, attender charges, medical expenses, mental agony, loss of amenities. The Tribunal has failed to adopt multiplier method considering the functional disability sustained by the appellant/claimant. Further, the Tribunal has failed to award any compensation towards future prospects. Hence, he prays to enhance the award.

5. Per contra, the learned counsel for the 2<sup>nd</sup> respondent/Insurance Company disputed the contentions by stating that the Tribunal has assessed the compensation with reference to the documents produced by the claimant and has awarded just compensation, which does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.



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6. The accident occurred on 22.04.1997 at about 6.40 a.m at Thirukovilur to Manalur Pettai Road, near Kangiyanur Village. The Manalurpettai police station, registered a case in Crime No.126 of '997 in connection with the accident. The appellant/claimant sustained grievous injuries viz., i) Fracture in left leg, grievous injuries all over her body and her left leg was amputated. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

7. A perusal of Exhibits P4 Accident Register and P5 permanent disability certificate would reveal that the minor appellant/claimant sustained fracture in left leg foot and grievous injuries all over the body. In this regard, PW2/doctor deposed that due to fracture in her left foot, a surgery has been done to the appellant/claimant and thereby, the left leg of the claimant was amputated below the knee upto 7.5 c.m. and he issued Ex.P6 disability certificate by assessing permanent disability at 75%. The learned counsel for the appellant/claimant contended that at the time of



accident, the injured was aged about 6 years and was a student of first standard and she has lost her career as her left leg was amputated by 7.5 cm, but without considering the same, the Tribunal has fixed the annual income of the minor claimant as Rs.15,000/- is low. Accepting the submission made by the learned counsel, this Court is inclined to fix Rs.20,000/- as annual income of the minor appellant/claimant and thus, the loss of income is modified from Rs.1,68,750/- to Rs.2,25,000/- (20,000 x 15 x 75%). Since the loss of income has been arrived by adding annual income of Rs.20,000/- instead of Rs.15,000/- and fixing permanent disability at 75%, the compensation awarded under the separate heads viz., annual income and permanent disability is hereby deleted.

8. It is the contention of the minor appellant/claimant that the Tribunal has failed to award any compensation towards attender charges and pain and suffering. Considering the fact that the left leg of the claimant was amputated and at the time of accident, she was only 6 years and needs an attender to take care of her for a long period, this Court is inclined to



award a sum of Rs.50,000/- towards attender charges and Rs.15,000/- towards pain and suffering. Insofar as the other heads of the compensation viz., loss of amenities, future medical expenses and loss of marriage prospects is concerned, this Court is inclined to award a sum of Rs.15,000/- towards loss of amenities, a sum of Rs.1,00,000/- towards future medical expenses and a sum of Rs.1,00,000/- towards loss of marriage prospects.

9. For the foregoing reasons, the award passed by the Tribunal is modified as follows:

| <i><b>Heads</b></i>        | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Award Amount<br/>by this Court<br/>(Rs.)</b></i> |
|----------------------------|------------------------------------------------------------|--------------------------------------------------------|
| Loss of Income             | 1,68,750/-<br>15000x15x75%                                 | 2,25,000/-<br>20000x15x75%                             |
| Annual Income              | 15,000/-                                                   | Nil                                                    |
| Permanent Disability       | 5,000/-                                                    | Nil                                                    |
| Pain and Suffering         | Nil                                                        | 15,000/-                                               |
| Attender charges           | Nil                                                        | 50,000/-                                               |
| Loss of Amenities          | Nil                                                        | 15,000/-                                               |
| Future Medical Expenses    | Nil                                                        | 1,00,000/-                                             |
| Loss of Marriage prospects | Nil                                                        | 1,00,000/-                                             |



| <i><b>Heads</b></i> | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Award Amount<br/>by this Court<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------------|--------------------------------------------------------|
| <b>Total</b>        | <b>1,88,750/-</b>                                          | <b>5,05,000/-</b>                                      |

Accordingly, the minor appellant/claimant is entitled to a compensation of Rs.5,05,000/- (Rupees Five lakhs and five thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,88,750/- to Rs.5,05,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.5,05,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.



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(iii) On such deposit, since the appellant is a minor, the Tribunal is directed to deposit the award amount bearing fixed deposit in any one of the Nationalised Bank till she attain majority and the guardian /father of the minor is permitted to withdraw the interest accrued once in six months for the welfare of the minor.

12.06.2023

Index : Yes/No  
Speaking Order/Non-Speaking Order  
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To

- 1.The Motor Accident Claims Tribunal,  
The Special Sub Judge, Thiruvannamalai.
- 2.The Section Officer,  
V.R Section,  
High Court, Madras.

**A.A.NAKKIRAN, J.**  
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