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C.M.A.No.918 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.918 of 2021

Minor Lithya (13), Rep. by her next friend /
Guardian / Father Sureshkumar,
Residing at D.No.3/43, Bharathi Nagar,
Vellakkalpatty, Chettichavadi Post,
Omalur Taluk, Salem District.
Appellant

...

Vs.

1. Lakshmanan

2. The National Insurance Co. Ltd.,
Salem Divisional Office – II, 11/289,
Ramakrishna Road, Salem – 636 007.

3. Govindhammal

4. The New India Assurance Co. Ltd.,
Srivari Shopping Hall, 2nd Floor,
New Bus Stand Road, Meyyanur, Salem.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order in MCOP.No.1616 of 2017 dated 08.01.2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.I, Salem.



C.M.A.No.918 of 2021

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.S.Arun Kumar for R2
Mr.G.Anandan for R4

No Appearance [R1 & R3]

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the order in MCOP.No.1616 of 2017 dated 08.01.2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.I, Salem.

2. Though notice was served on respondents 1 and 3, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

3. It is the case of the claimant that on 28.03.2017 at about 6:30 p.m. when the claimant (minor) was travelling as pillion rider in a Suzuki Access bearing Registration No.TN 30 AV 9982 driven by the mother of the claimant / third respondent, at that time a motor cycle bearing Registration No.TN 54 M 8251 driven by the first respondent came in the opposite direction in a rash and



negligent manner and hit against the two wheeler driven by the third respondent, due to which the claimant was thrown away from the said vehicle resulting in sustaining grievous injuries. Thereby, a claim petition has been filed by the claimant seeking a sum of Rs.15,00,000/- as compensation.

4. Before the Tribunal, the claimant examined P.W.1 and marked Exs.P.1 to Ex.P.16. The respondents examined R.W.1 and R.W.2 and marked Exs.R1 and R5. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.6,10,221/- as compensation to the claimant. Challenging the quantum of compensation, the appellant/claimant is before this Court.

5. The learned counsel appearing for the appellant/claimant submits that the claimant had suffered major injuries including fracture on the head and had underwent treatment for the period of more than 15 days as in-patient. The claimant has also undergone skin grafting and her toes were amputated. In spite of grievous nature of the injuries and the pain and suffering associated with the surgeries and other medical treatment and without considering the graveness of



C.M.A.No.918 of 2021

the same, the Tribunal has awarded minimal compensation which requires to be enhanced.

6. Per contra learned counsel appearing for the second respondent / insurer of the first respondent vehicle submits that the compensation awarded by the Tribunal is highly excessive and considering the fact that the claimant is a school going child and the injuries suffered by her would have had an impact on the physical and mental condition of the child, the insurance company had not filed any appeal challenging the quantum of compensation . Therefore no interference is warranted.

7. Heard the learned counsel appearing for the appellant, and the learned counsel appearing for the second and fourth respondents and perused the materials placed on record.

8. The accident and the injuries suffered by the claimant is not disputed. The only grievance is with regard to the compensation granted by the Tribunal which accordingly to the claimant is meagre. A perusal of the order passed by the Tribunal shows that the Tribunal has in depth considered all the



injuries which were suffered by the claimant and the treatment that have been given to the claimant with regard to the said injuries and the extent of the injuries suffered as well. Considering the nature of the injuries suffered the Tribunal has also considered the ratio laid down by the Apex Court in the case of ***Muthu Vs. Managing Direction, Master Mallikarjun Vs. Divisional Manager, the National Insurance Company Limited & Another*** reported in ***2013 (2) TNMAC 338*** wherein the amount which has to be given in respect of the percentage of disability suffered by the minor has been quantified. The relevant portion of the said decision as extracted by the Tribunal is as under:

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 upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are



C.M.A.No.918 of 2021

exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents"

9. Applying the ration laid down by the Hon'ble Apex Court the Tribunal has on the basis of the documents and also the opinion of the Doctors assessed the disability at 17% for which the Tribunal has awarded a sum of Rs.3,00,000/-. The said compensation awarded is in line with the ratio laid down in the aforesaid decision and the same does not require any interference.

10. Further, the compensation has also been awarded under the head attender charges and also medical expenses and other incidental expenses during the period of hospitalization to the tune of Rs.30,000/- and Rs.2,80,221/- . The said compensation cannot be said to be meagre and it is proportionate and reasonable and the same does not warrant any interference by no stretch said to be meagre the compensation can be termed to be meagre and in the said opinion of this Court, the compensation is fair, just and reasonable and the same does not require any interference.



C.M.A.No.918 of 2021

WEB COPY

11. With the above observation this civil miscellaneous appeal is dismissed confirming the order passed by the Tribunal. No costs.

20.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accident Claims Tribunal / Special Subordinate Judge No.I, Salem.
2. The Section Officer, V.R. Section, High Court, Madras.



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C.M.A.No.918 of 2021

M.DHANDAPANI,J

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C.M.A.No.918 of 2021

20.12.2023