



WEB COPY



C.M.A.No.2033 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2023

CORAM:

**THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

Civil Miscellaneous Appeal No.2033 of 2021

Minor Mohitha rep. By their mother/
Natural guardian Tamararasai

... Claimant/Appellant

..Vs..

1. Elumalai
2. The Divisional Manager,
The United India Insurance Company Ltd.,
No.46, Katpadi Road, Vellore.

... Respondents/Respondents

(R-1 remained exparte before the tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 13.1.2020 made in M.A.C.T.O.P.No.1504 of 2017 on the file of the Special Sub Court (Motor Accidents Claims Tribunal), Thiruvannamalai.

For Appellant	: Mr.A.Subadra
For Respondent No.2	: Mr.S.Arun Kumar
For Respondent No.1	: Exparte

JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR, J.)



C.M.A.No.2033 of 2021

Dissatisfied with the award, dated 13.1.2020, passed in M.A.C.T.O.P.No.1504 of 2017 by the Motor Accidents Claims Tribunal, Thiruvannamalai, the claimant has preferred the instant appeal for enhancement of compensation awarded by the tribunal.

2. According to the appellant, the claimant was traveling as a passenger in the first respondent's TATA Motors SFC 407 bus bearing registration No.TN.25/X-6696 from Arcot proceeding towards Polur, when the vehicle approached near junction road at Bharatharami Village, Arcot to Arni road, the driver of the first respondent's vehicle drove the vehicle in a rash and negligent manner, without observing any rules and lost his control, resulting in, the vehicle was overturned. Due to the impact, three persons died, four persons including the appellant sustained serious injuries. The appellant sustained multiple fractures in her right hand, head, right side eye and other parts of the body. A criminal case in has been registered by Thimiri Police Station in Cr.No.121 of 2017 for the offence under Sec.279, 337, 304(A) I.P.C. Thus, the appellant claimed a compensation of Rs.50,00,000/- from the second respondent Insurance Company.

3. Counter affidavit has been filed by the second respondent refuting the allegations made in the claim petition and stated that the claimant has to prove that she travelled in the vehicle involved at the time of accident. It is



C.M.A.No.2033 of 2021

further stated in the counter affidavit that the in the policy, owner of the vehicle paid premium for 12 passengers alone, whereas 19 persons were travelled in the said vehicle and because of the over seating capacity, the accident had occurred. The owner of the vehicle violated the policy conditions. Therefore, the second respondent Insurance Company is not liable to pay any compensation to the claimant/appellant.

4. To prove the claim, the claimant has examined P.W.1 to P.W.8 and marked Ex.P1 to P20. On the side of the second respondent, official of the Insurance company was examined as R.W.1 and marked Ex.R1. Disability Certificate has been produced by the claimant and the same is marked as Ex.C1. Based on the oral and documentary evidence, the Tribunal has come to a conclusion that the appellant has suffered 30% disability. Based on the decisions of the Hon'ble Supreme Court as well as this Court, the tribunal has awarded Rs.3,00,000/- towards 30% disability sustained by the claimant. A sum of Rs.30,000/- towards pain and sufferings, Rs.15,000/- towards loss of amenities, Rs.10,000/- towards loss of clothes and nourishment, Rs.33,290/- for medical expenses incurred by the claimant. Thus, the tribunal awarded a sum of Rs.3,78,290/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:



C.M.A.No.2033 of 2021

WEB COPY

Heads	Amount in Rs.
Permanent disability 30%	3,00,000/-
Pain and sufferings	30,000/-
Loss of amenities	15,000/-
Nourishment & Damages to clothes	10,000/-
Medical expenses	33,290/-
Total	3,78,290/-

5 Aggrieved by the said award, the claimant has preferred the instant appeal for enhancement of compensation.

6. Heard, the learned counsel appearing for the claimant/appellant and the learned counsel appearing for the respondent/Insurance company and perused the materials available on record.

7. According to the learned counsel appearing for the appellant, the tribunal has not appreciated the case of the appellant that the appellant suffered serious injuries on the right side eye which caused permanent disability to the appellant. The disability Certificate was marked as Ex.C1. The award granted by the tribunal towards permanent disability is not sufficient and insofar as the other heads also, tribunal has not granted just and reasonable compensation. Therefore, the compensation awarded by the tribunal requires modification.



C.M.A.No.2033 of 2021

WEB COPY

8. Per contra, the learned counsel appearing for the respondent/ Insurance company would submit that pursuant to the order passed by this Court dated 9.6.2022, the claimant has appeared before the Medical Board, Regional Institute of Ophthalmology and Government Ophthalmic hospital, Egmore, Chennai for examination and report also submitted wherein it is ascertained 30% disability (Visual). The tribunal taking note of the decisions of the Hon'ble Supreme Court, this Court and considering the facts and circumstance of the case, awarded just and reasonable compensation. Therefore, the appeal is liable to be dismissed.

9. Taking note of the disability Certificate Ex.C1 which shows permanent disability sustained by the appellant and the guidelines framed by the Hon'ble Supreme Court for granting compensation in the case of disability, the tribunal has safely come to the conclusion that the claimant suffered 30% disability. The report submitted by the Medical Board also confirmed 30% disability suffered by the claimant in the said accident. Therefore, we are of the view that the award of Rs.3,00,000/- granted by the tribunal towards permanent disability is just and reasonable and as such, no warrants to interfere with the award insofar as the disability.

10. However, insofar as the other heads viz., pain and sufferings,



C.M.A.No.2033 of 2021

loss of amenities, Nourishment and damages to clothes and medical expenses are concerned, it requires enhancement of compensation to the appellant since the claim of the appellant under these heads, has not been properly considered by the tribunal. Considering the peculiar circumstances of the case, the injuries suffered by the appellant being a girl child suffered 30% disability which requires support of the attendant and considering the age of the appellant at the time of accident is 2 years and various aspects involved due to the accident, this Court is inclined to enhance the award passed by the tribunal under the following heads:

Heads	Amount in Rs.
Permanent disability 30%	3,00,000/-
Pain and sufferings	50,000/-
Loss of amenities	75,000/-
Transportation	10,000/-
Attendant charges	10,000/-
Nourishment	15,000/-
Damages to clothes	15,000/-
Medical expenses	33,290/-
Total :	5,08,290/-

This Court is inclined to enhance the compensation to the tune of Rs.5,08,290/- in toto. The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the order passed by the tribunal is confirmed.



C.M.A.No.2033 of 2021

11. The claimant/appellant is entitled to withdraw Rs.5,08,290/-

(Rupees five lakhs eight thousand two hundred and ninety only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The respondent/Insurance company is directed to deposit difference amount of compensation along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of copy of the judgment. On such deposit being made by the second respondent/Insurance Company, the claimant/appellant is entitled to withdraw the amount by filing appropriate application. The order of the tribunal shall be followed insofar as the withdrawal of the minor's share.

12. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

(D.K.K.J. K.G.T.J.)
30.3.2023

Speaking/Non Speaking order

Index: Yes/No

Internet: Yes/No

vaan

To

1. The Special Sub Court (Motor Accidents Claims Tribunal), Thiruvannamalai.
2. The Divisional Manager, The United India Insurance Company Ltd.,
No.46, Katpadi Road, Vellore.
3. The Section Officer, V.R.Section, Madras High Court, Chennai-104.



WEB COPY



C.M.A.No.2033 of 2021

**D.KRISHNAKUMAR, J.
AND
K.GOVINDARAJAN THILAKAVADI, J.**

vaan

Civil Miscellaneous Appeal
No.2033 of 2021



WEB COPY



C.M.A.No.2033 of 2021

30.3.2023