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C.M.A.No.1818 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1818 of 2021

Bairavi

*(Sole Appellant is sou motu declared as major
and his father Thangaraj is discharged
from guardianship of sole appellant vide
Court order dated 21.12.2023 made
in C.M.A.No.1818 of 2021)*

... Appellant

Vs.

1. R.Subramaniam

*(Notice for R1 may be dispensed with for the time being and separate
petition is filed for the same)*

2. National Insurance Compay Ltd.,

Rep. by its Manager, 1631-1/B,

Salem Bhavani Main Road, Sankari, Salem District. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order
made in M.C.O.P.No.369 of 2012 on the file of the Motor Accident
Claims Tribunal cum IV Additional District Judge, Erode District at
Bhavani dated 2.6.2017 and for enhancement of compensation.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mrs.R.Sree Vidhya for
R2
Notice Dispensed with
[R1]



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JUDGEMENT

Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani, the present appeal has been filed by the appellant / claimant to set aside the award dated 02.06.2017 passed in M.C.O.P.No.369 of 2012.

2. It is the case of the claimant that on 07.09.2012 at about 5:45 a.m. when the claimant was travelling in the TNSTC Bus bearing Reg.No.TN 33 N 2666, at that time a bus bearing Reg.No.TN 38 AS 9393 driven by its driver hit the bus which came in the opposite direction in a rash and negligent manner, due to which the claimant sustained grievous and simple injuries all over the body. Therefore, the claimant had filed a claim petition claiming a sum of Rs.3,00,000/- for the injuries sustained by her in the said road accident.

3. Before the Tribunal, the claimant had examined one witness viz. P.W.1 and examined the doctor as P.W.2 and marked 12 documents viz.,



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Ex.P.1 to Ex.P.6. On the side of the respondents, neither any documents were marked nor any witnesses were examined on behalf of the respondents. After adjudication, the Tribunal awarded a sum of Rs.59,000/- as compensation to the appellant / claimant. Not satisfied with the same, the appellant has preferred the present appeal seeking enhancement.

4. The learned counsel appearing for the appellant submitted that, though the individual doctor has assessed the disability at 36%, however, the Tribunal had awarded only a sum of Rs.30,000/- towards the injuries on the ground that Doctor was not examined as witness and also that the disability certificate was not marked before the Tribunal, which is not sustainable and the same requires to be re-considered by this Court. More so, Ex.P.5 the Accident Register of the claimant which clearly reveals that the appellant sustained fracture in the left femur, however, without considering the same the Tribunal has awarded only a sum of Rs.30,000/- towards grievous injury which is *per se* unsustainable. Accordingly, he prays for appropriate enhancement in favour of the appellant.



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5. The learned counsel appearing for the second respondent/Insurance Company submitted that, though no documents were marked on behalf of the appellant with regard to the medical certificate or examined the Doctor who treated the appellant, however, the Tribunal considering the injuries sustained by the appellant has awarded the compensation which is just and reasonable and does not require interference. Accordingly, he prays to dismiss the appeal.

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

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. Though the appellant has not examined the Doctor and has not marked the disability certificate, however, considering the fact that appellant is a minor and considering the nature of injuries suffered by her. This Court is inclined to fix a sum of Rs.50,000/- under



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the head Grievous injury.

8. Further, the Tribunal had awarded a sum of Rs.20,000/- towards pain and sufferings which is on the lower side and the same is enhanced to a sum of Rs.50,000/-; Rs.3,000/- towards extra nourishment which is very meagre and the same is enhanced to a sum of Rs.10,000/-; Rs.5,000/- towards transportation which is also on the lower side and the same is enhanced to a sum of Rs.10,000/-; Rs.1,000/- towards damages to clothes and articles, which is just and reasonable. Further no amount has been granted under the head attender charges, hence this Court is inclined to fix a sum of Rs.5,000/- towards the said head.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Grievous injury	30,000/-	50,000/-



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S.No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
			(enhanced)
2	Pain and Sufferings	20,000/-	50,000/- (enhanced)
3	Extra nourishment	3,000/-	10,000/- (enhanced)
4	Transport to Hospital	5,000/-	10,000/- (enhanced)
5	Damages to clothes	1,000/-	1,000/-
6	Attender charges	-	5,000/-
	Total	59,000/-	1,26,000/-

10. When the claim petition was filed in the year 2012, the appellant aged about 7 years. Now, the appellant should be aged about 19 years and is therefore, major. Though no application has been taken out to declare her as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellant as major and discharges her father Mr.Thangaraj from the guardianship. The Registry shall carry out the necessary amendments.

11. Accordingly, this appeal is partly allowed and the compensation amount is enhanced from Rs.59,000/- to Rs.1,26,000/- and



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the second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.369 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of eight weeks (8) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant/claimant. However, the appellant is not entitled for interest for the default period if any. There shall be no order as to costs in the present appeal.

21.12.2023

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

M.DHANDAPANI, J.

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- 1.Motor Accident Claims Tribunal cum IV Additional District Judge,
Erode District at Bhavani
- 2.The Section Officer, V.R.Section, High Court, Madras.

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21.12.2023