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C.M.A.No.1733 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1733 of 2020

Minor. Deepashree,
Rep. by her next friend /
Guardian / Mother,
Gunasundari.

.. Appellant

Vs.

1.Moorthy

2.The United India Insurance Co. Ltd.,
Divisional Office, HUB Ranga Building,
Peramanur Main Road, Peramanur,
Salem – 636 007.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.02.2020 made in M.C.O.P.No.2553 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.D.Bhaskaran



J U D G M E N T

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Not being satisfied by the compensation awarded by the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem, in M.C.O.P.No.2553 of 2016 on 03.02.2020, the appellant / claimant has preferred this Civil Miscellaneous Appeal for enhancement of the compensation.

2.The claim petition was filed under Section 166 of the Motor Vehicles Act, read with Rule 3 of TNMACT Rules, claiming compensation of Rs.15,00,000/- from the respondents for the injuries sustained by her in the motor accident that occurred on 31.05.2016.

3.The learned Tribunal after hearing both sides arguments and upon perusing the oral and documentary evidence, has granted compensation for an amount of Rs.5,40,547/- and directed the 2nd respondent – Insurance Company to pay the said compensation along with interest at the rate of 7.5% per annum from the date of petition till the date deposit.



4.The learned counsel for the appellant would contend that at the time of accident, the appellant was a minor girl, aged about 7 years studying 2nd standard. In the accident, she sustained grievous injuries and underwent surgeries and had taken inpatient treatment from 01.06.2016 to 14.06.2016. Due to the injuries sustained by her in the accident, she did not attend the school for more than two months and she could not move anywhere without the help of others. He would further contend that the Medical Board examined the appellant and assessed the disability of the appellant at 15% and issued Ex.C1 – disability certificate to that effect. The Tribunal has not granted any amount for disfiguration and loss of marital prospects. The total compensation awarded is on the lower side and prayed for enhancement of compensation.

5.Per contra, the learned counsel for the 2nd respondent – Insurance Company would vehemently argue that the Tribunal following the judgment of the Hon'ble Supreme Court in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited & another***, reported in ***[(2014) 14 SCC 396]***, granted a sum of Rs.3,00,000/- for 15% disability as assessed by the Medical Board, which need not be interfered with. The amounts awarded by the Tribunal under other heads are also not meagre and



the appellant does not need any enhancement and prayed for dismissal of the appeal.

6. Heard the learned counsel for the appellant and the learned counsel for 2nd respondent – Insurance Company and perused the materials on record.

7. From the materials available on record, it is seen that on 31.05.2016 at about 08.00 P.M., while the appellant was standing on the left side of the South to North Kumaramangalam – Sakthinaickenpalayam road, near Kallangadu Curve, Motor Room, a Tata Ace goods carriage vehicle bearing Registration No. TN 34 E 4932, came from South to North and turned towards West in a rash and negligent manner at a high speed, without blowing horn and dashed on the appellant. In the said impact, the rear wheel of the Tata Ace goods carrying vehicle ran over the right leg of the appellant and she sustained grievous injuries is not in dispute.

8. It is seen from the available materials that in the accident, the appellant sustained deep friction burns over lateral aspect of right leg with deect over right lateral malleolus region with exposed lateral malleoli. The



Medical Board examined the appellant and assessed the percentage of disability of the appellant as 15% and issued Ex.C1 – disability certificate.

The Hon'ble Supreme Court reported in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited & another*** reported in ***[(2014) 14 SCC 396]***, wherein it has been held that 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 Rs.1 lakh, unless there are exceptional circumstances to take different yardstick.

9.The Tribunal following the above said judgment of the Hon'ble Supreme Court in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited & another*** reported in ***[(2014) 14 SCC 396]***, has granted a sum of Rs.3,00,000/- for 15% disability and the same is



acceptable and reasonable and hence, does not need any interference.

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10.Further, it appears that the appellant has taken inpatient treatment from 01.06.2016 to 14.06.2016 for 14 days at Ganga Medical Centre, Coimbatore. The Tribunal did not grant any amount for transportation and extra nourishment. The appellant is granted a sum of Rs.15,000/- each towards extra nourishment and transportation.

11.In other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference.

12.Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability, pain and sufferings, mental and physical shock, hardship, inconvenience and discomforts etc., and loss of amenities	3,00,000/-	3,00,000/-	Confirmed
2.	Medical bills	1,40,547/-	1,40,547/-	Confirmed
3.	Discomfort,			



	inconvenience and loss of earnings to the parents during the period of hospitalization	1,00,000/-	1,00,000/-	Confirmed
4.	Extra nourishment	-	15,000/-	Granted
5.	Transportation	-	15,000/-	Granted
	Total	Rs.5,40,547/-	Rs.5,70,547/-	Enhanced by Rs.30,000/- (Rs.5,70,547/- - Rs.5,40,547/-)

13.In the result,

13(i).This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,40,547/- is hereby enhanced to Rs.5,70,547/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

13(ii).The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2553 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem.

13(iii).On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor appellant attains



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majority.

13(iv).On such deposit made by the Tribunal, the mother of the minor appellant viz., Gunasundari, is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant, till the minor appellant attains majority, by making necessary cheque application before the Tribunal. No costs.

.07.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special Subordinate Judge No.II,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court, Madras.

R.KALAIMATHI, J.

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