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C.M.A.No.279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.279 of 2023

K.Krishitha (minor)
Rep.by her father Kumar

... Appellant

Vs.

1.Kalidoss

2.Royal Sundaram Alliance Insurance Co.Ltd,
Subramanivan Building, 2nd Floor,
No.1, Club House Road, Annasalai,
Chennai-2.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and award dated 07.11.2017 made in M.C.O.P.No.4811 of 2011 on the file of the Motor Accident Claims Tribunal (Small Causes Court, Special Sub Court No.2), Chennai.

For Appellant

: Mr.K.Varadha Kamaraj

For R2

: Mr.M.Krishnamoorthy



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JUDGMENT

The claim Petitioner is the Appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.By consent of both the parties, this Civil Miscellaneous Appeal has taken up for final disposal.

4. The above M.C.O.P. was filed by the minor K.Krishitha, represented by her father Kumar for the grievous compound injuries sustained by the minor aged about 1 year 11 months and seeking compensation for the injuries sustained by her in a road traffic accident on 16.03.2011. The Tribunal has awarded a sum of Rs.15,23,500/- with interest at the rate of 7.5%. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.

5.During the trial, on the side of the claim Petitioner, PW1 was examined, Ex.P1 to Ex.P.9 were marked and on the side of the Respondents, none was examined and no documents were marked.

6.Heard the learned counsel for the claim Petitioner/Appellant and learned counsel for the 2nd Respondent.



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7. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered (i) Amputation stump right leg; (ii) Fracture Upper and Lower end of Femur; (iii) Fracture Left Leg; (iv) Fracture Pelvis Right iliac crest; (v) Perineal laceration; (vi) Gangrene Right leg secondary to Vascular injury; (vii) Gangrene of sutured skin flap left foot; (viii) Post right knee disarticulation Ulcer of the Stump; and (ix) Acute Pyelonephritis and injuries all over the body. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

8. After hearing the rival submissions, this Court is of the considered view that notional income of Rs.30,000/- per annum for the minor child may be fixed by following the decision of Kishan Gopal V. Lala 2013 (2) TNMAC 358 (SC), the Tribunal has fixed the notional income of the claimant/minor petitioner at Rs.30,000/- per annum.

9. So far as the multiplier is concerned, following the decision of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***, right multiplier is “15” and the same is adopted.

10. Considering the loss of earning of the claimant/petitioner at 75%



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arrived at by the Tribunal, the claimant/petitioner is entitled to compensation to a sum of Rs.3,37,500/- (Rs.30,000/-*15*75%) towards 'loss of earning capacity'.

11. Since the 1 year 11 months old girl, the grievous injuries has been taken, this Court is of the considered view that loss of earning capacity can be granted and accordingly, Rs.42,000/-(75x4200*15) is awarded towards 'loss of earning capacity' and hence the pecuniary loss sustained by the claim Petitioner is re-assessed as follows:

(Rs.42,000*15*75%= Rs.4,72,000/-)

12. Taking into consideration, the nature of injuries and she was taking treatment as in-patient for more than five months, this Court is enhanced from Rs.5,000/- to Rs.50,000/- under the head of 'Transport charges', and under the head 'attender charges' this Court enhanced from Rs.30,000/- to Rs.50,000/-. A sum of Rs.2,00,000/- granted by the Tribunal under the head 'loss of matrimonial prospects' is enhanced to Rs.3,00,000/-The compensation awarded towards other heads are just and proper and the same are hereby confirmed.



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13. Accordingly, the award of the Tribunal in M.C.O.P.No. 4811 of 2011 is modified as follows:

<i>Sl. No</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1.	Loss of earning capacity	Rs. 3,37,500/-	Rs. 4,72,000/-
2.	Compensation continuing permanent disability if any	Rs. 2,25,000/-	Rs. 2,25,000/-
3.	Pain and sufferings	Rs. 75,000/-	Rs. 75,000/-
4.	Transport to Hospital	Rs. 5,000/-	Rs. 50,000/-
5.	Extra-nourishment	Rs. 50,000/-	Rs. 50,000/-
6.	Damage to dress	Rs. 2,000/-	Rs. 2,000/-
7.	Medical expenses	Rs. 30,900/-	Rs. 30,900/-
8.	Attending charges	Rs. 30,000/-	Rs. 50,000/-
9.	Future Medical Expenses	Rs. 3,43,100/-	Rs. 3,43,100/-
10.	Loss of amenities and enjoyment of life	Rs. 75,000/-	Rs. 75,000/-
11.	Loss of matrimonial prospects	Rs. 2,00,000/-	Rs. 3,00,000/-
12.	Loss of expectation of life	Rs. 75,000/-	Rs. 75,000/-
13.	Mental agony to the petitioner	Rs. 75,000/-	Rs. 75,000/-
	Total	Rs.15,23,500/-	Rs.18,23,000/-

The compensation awarded by the Tribunal is enhanced from Rs.15,23,500/- to Rs.18,23,000/- which shall carry interest at the rate of 7.5% per annum.



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14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.15,23,000/- to Rs.18,23,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) From the records, this Court finds that the Civil Miscellaneous Appeal has been filed with a delay of 553 days and the said delay was condoned on condition that the claim petitioner is not entitled for any interest for the delay period.

(v) The second respondent/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.18,23,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 4811 of 2011, on the file of the Motor



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Accidents Claims Tribunal, Small Causes Court, Special Sub Court No.2,
Chennai, within a period of eight weeks from the date of receipt of a copy of
this order.

(vi) On such deposit being made by the second respondent, the
appellant/claimant is permitted to withdraw the same, in the manner known to
law.

09.02.2023

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

To

1. The Motor Accident Claims Tribunal
(Small Causes Court, Special Sub Court No.2), Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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RMT.TEEKAA RAMAN,J.,

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Judgment made in
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