



CMA.No.1345 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1345 of 2017

P.Keerthika(minor)
(name amended as per order in MP.No.1337/2012,
dt 08.11.2012)
rep by her father N.Parthasarathy ... Appellant

..Vs..

1.G.Neelamegam
(Remained exparte before the trial court)

2.Future Generali India Insurance Co., Ltd.,
Karumuthu Nilayam, 1st floor North Wing,
O.No.758, N.No.192, Anna Salai,
Chennai 600 002. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2014 made in MACTOP.No.1241 of 2010 on the file of the Motor Accident Claims Tribunal (IV Judge, Small Causes Court, Chennai).

For Appellant	: Mr.M.Mahendran for M/s.N.M.Muthurajan
For Respondents	: Set exparte - R1 Mr.E.Rajadurai for R2 for Mr.M.B.Gopalan Associates

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 31.01.2014



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passed by the IV Judge, Small Causes Court, Chennai / Motor Accident
Claims Tribunal, in MACTOP.No.1241 of 2010.

2. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Transport to Hospital	7000/-
Extra Nourishment	7000/-
Medical Expenses	10,000/-
Loss of Amenities & future prospects	20,000/-
Attender charges	6,000/-
Loss of Marital life	10,000/-
Pain & sufferings	25,000/-
Disability (30%)	45,000/-
Total	1,30,000/-



4. The learned counsel appearing for the appellant has submitted that the Judgment of the lower court is contrary to law and weight of evidence.

He further submitted that the appellant has sustained grade-1 compound fracture shaft femur right and other injuries. She was treated as in-patient at Government General Hospital, Chennai from 24.01.2010 to 15.02.2010. During the course of treatment, surgery conducted and ORIF plating was done. She also continued treatment as out-patient. However, the award of the Tribunal at Rs.25,000/- towards pain and sufferings is on the lower side. He further submitted that the appellant is suffering with 35% partial and permanent disablement, but the Tribunal has re-assessed the same into 30% and awarded only Rs.45,000/- at the rate of Rs.1500/- per percentage which is incorrect. It has failed to grant the compensation for disablement not only on the basis of percentage of disablement, but also depending upon the nature of injuries and age of the victim as well. He further submitted that during the period of treatment, the appellant is attended by her father and relatives for which the Tribunal has awarded only a meagre sum of Rs.6000/-. Due to the said accident and injuries caused thereby, the appellant has lost her studies and she has to attend the same 1st standard for the next year also. Though the father of the appellant claimed a sum of Rs.1,00,000/- under the head of loss of studies, but the Tribunal has not



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granted any award under this head and the same is incorrect. It has erred in granting Rs.20,000/- towards loss of amenities of life which is on the lower side. Also, the compensation awarded under the other heads are also very meagre. It has erred in fixing the rate of interest at 7.5% and the same is to be enhanced and hence, he prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ Insurance Company has submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.

7. As far as the quantum of compensation arrived at by the Tribunal is concerned, P.W.1/father of the minor appellant has been examined, who deposed that the appellant was treated as in-patient from 24.01.2010 to



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15.02.2010 in the Government General Hospital. Ex.P8/Discharge summary

would reveal that she sustained grade I compound fracture shaft of femur (P/3) and had undergone surgery ORIF and NDCP was done. Ex.P9/photograph with CD would reveal the nature and gravity of the injuries sustained by the appellant. He further deposed that his daughter has limp walking and she finds difficulty in sitting cross legged, running, standing and also in playing. Upon perusing Ex.P17/X-ray, PW2/Doctor has assessed the disability of the appellant at 35% and issued Ex.P16/disability certificate. PW2 has further deposed that he has not seen the further treatment records and has not filed X-ray report in support of his assessment. In such circumstances, the Tribunal has fixed 30% disability for the injuries sustained by the appellant. Considering the nature of injuries sustained by the appellant, the Tribunal has awarded Rs.1500/- per percentage and thus arrived at Rs.45000/- (1500x 30%) under the head of disability which is incorrect and hence the same needs re-visit. Considering the age of the appellant/claimant and nature of injuries, this court is inclined to fix Rs.3000/- per percentage and arrived at Rs.90,000/-(3000 x 30%). From the records, it is seen that she has taken continuous treatment in private hospitals even after discharge from the Government Hospital. This Court is of the considered view that due to the nature of grievous injuries



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sustained by the appellant and the period of treatment as in-patient and outpatient, she has incurred transport expenses and she might have taken nutritious food and hence this court is inclined to grant a sum of Rs.10,000/- each towards Transport to Hospital and Extra Nourishment instead of Rs.7000/- each as assessed by the Tribunal.

8. A Perusal of Ex.P8/Discharge summary shows that the claimant has taken treatment as in-patient in Government General Hospital from 24.01.2010 to 15.02.2010. The father of the appellant / claimant has stated that she could not do her day to day need by herself without the help of attender during the treatment period and she also finds it difficulty in sitting cross legged, running, standing, walking and also in playing. Hence, the award granted under the head of attender charges is enhanced to Rs.10,000/- instead of Rs.6000/- as assessed by the Tribunal.

9. From the records, it is seen that due to the accident that has occurred on 24.01.2010, the appellant has sustained grade I compound fracture shaft of femur (P/3) and had undergone surgery ORIF with NDCCP was done and she finds it difficulty in walking, standing, climbing steps and playing, but the Tribunal has awarded a meagre sum of Rs.25,000/- towards



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Pain and sufferings and hence the same needs revisit. Hence, a sum of Rs.30,000/- is fixed by this court towards Pain and sufferings.

10. Insofar as the other heads such as medical expenses, loss of amenities and marital life are concerned, the assessment of the compensation awarded by the Tribunal are just and reasonable compensation and they do not call for any interference by this Court.

11. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Transport to Hospital	7000/-	10,000/-
Extra Nourishment	7,000/-	10,000 /-
Medical Expenses	10,000 /-	10,000/-
Amenities	20,000/ -	20,000/-
Attender charges	6,000/-	10,000/-
Marital life	10,000/-	10,000/-
Pain & Sufferings	25,000/-	30,000/-
Disability	45,000/-	90,000/-
Total	1,30,000/-	1,90,000/-



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12. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.1,30,000/- to Rs.1,90,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MACTOP.No.1241 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent/owner of the vehicle, in accordance with law. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the share of award amount of the appellant shall be deposited in any one of the Nationalised Banks till she attains majority and the father of the minor appellant is permitted to withdraw the interest accrued once in three months directly from the bank.

No costs.

Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
IV Judge, Small Causes Court, Chennai).
2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.A.NAKKIRAN, J

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