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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1017 OF 2023

and

C.M.P(MD)No.14022 of 2023

The United India Insurance Company Limited,
through its Branch Manager,
No.53, Kayalpattinam Road,
Tiruchendur,
Tuticorin District.

:Appellant/Third Respondent

.VS.

1.Minor Sriram

(Minor Petitioner through his mother and next guardian Pushparani,
son of Jegadheeswaran(Late), aged 40 years, residing at D.No.48,
Nadar North Street, Kunnathur, Tirunelveli District and now residing
at D.No.54/2F, Gandhi Nagar, Pettai, Tirunelveli)

(Amended as per order in I.A.No.1 of 2021, dated 17.08.2021)

:First Respondent/First
Petitioners

2.The Correspondent,
Sivanthi Aditanar College of Engineering at
Palayamkottai Road,
Kayapattinam Road,
Tiruchendur,
Tuticorin District

: Second Respondent
/First Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act,1988 against the award made in M.C.O.P.No.
1363 of 2019, dated 24.02.2023, on the file of the learned Special



Sub-Court dealing with M.C.O.P Cases, Tirunelveli.

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For Appellant	:Mr.A.Ilango
For Respondent-1	:Mr.P.Samuel Gunasingh
For Respondent-2	:Mr.R.J.Karthick

JUDGMENT

Challenging the quantum of compensation awarded in M.C.O.P.No.1363 of 2019, on the file of the Motor Accidents Claims Tribunal/Special Sub-Court, Tirunelveli, this Civil Miscellaneous Appeal is filed.

2.The first respondent/claimant through his mother and next friend, filed the claim petition seeking compensation of Rs.25 lakhs for the injuries suffered in the road traffic accident on 7.2.2019 at 5.30 p.m. It is stated in the claim petition that when the first respondent claimant was travelling as a pillion rider in the motor cycle bearing Registration No. TN 92 A 3453 near Kayamozhi, Thalavaipuram Road at Vaikkalpalam Turning, the bus bearing Registration No. TN 69 S7099 came from the opposite direction, driven in a rash and negligent manner and dashed against the two wheeler and as a result, the first respondent suffered extensive



injuries. He was aged 10 years at the time of accident and because of the accident, he suffered post external fixation for fracture both bone right leg and fracture right medial condyle hoffass femur compound grade 3B. After the accident, he is not able to walk or run as he was used to do before the accident. The injuries caused in the accident permanently disabled him in performing his regular activities and a compensation of Rs.25 lakhs was claimed.

3.The appellant filed counter questioning the liability and quantum. It was stated that the rider of the motor cycle was also responsible for the accident. The compensation claimed is excessive.

4.During the enquiry P.W.1 and P.W.2 were examined. Ex.P1 to Ex.P9 were marked. The disability Certificate issued by the Medical Board to the first respondent was marked as Ex.C1. There was no oral or documentary evidence on the side of the appellant. On the basis of the oral and documentary evidence, the learned Tribunal awarded a sum of Rs.5,81,300/- as compensation to the first respondent.

5.The learned counsel for the appellant submitted that the



injured/first respondent was only 10 years at the time of accident.

Fixing the notional income at Rs.5,000/-p.m and adding 40% towards future prospects, is excessive. It is his further submission that minor first respondent was not examined as a witness and that no evidence was produced regarding the injuries and disability suffered by the first respondent/claimant. The learned counsel for the appellant further submitted that compensation may be reduced.

6.In reply to the submission of the learned counsel for the appellant, learned counsel for the first respondent submitted that medical records produced in the form of Ex.B2 to Ex.B5 clearly show the nature of the accident and the injuries suffered by the first respondent. When the disability certificate proved the nature of the disability suffered by the first respondent at 30%. Certainly, a boy aged 10 years at the time of accident in 2019, who suffered injuries in the accident leading to disability at 30% would face functional disability in his day-to-day activities. He is now studying in 12th standard and he cannot walk or run as before. Thus the compensation awarded is just and appropriate and prayed for dismissal of the appeal.

7.This Court considered the rival submissions made on either



side and perused the records produced before this Court.

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8. On going through the award of the Tribunal, compensation was awarded under different heads as follows:

1. Future loss of earning capacity	- Rs.4,15,800/-
2. Medical Expenses	- Rs.500/-
3. Loss of convenience	-Rs.50,000/-
4. Pain and suffering	-Rs.50,000/-
5. Transport Expenses	-Rs.5,000/-
6. Attendant Charges	-Rs.50,000/-
7. Extra Nourishment	-Rs.10,000/-

Total	-Rs.5,81,300/-

9. As rightly contended by the learned counsel for the first respondent, the first respondent had suffered the following injuries:

“post external fixation for fracture both bone right leg and fracture right medial condyle hoffass femur compound grade 3B”.

10. Claimant's mother is the best person to give evidence on behalf of her minor son. She has given clear evidence about the injuries and disability suffered by her son. Her evidence cannot be sustained. For a boy aged 10 years at the time of accident, the injuries suffered will certainly impact the physical activities and in



doing the day-to-day functioning or involving in sport activities.

When that be the case, the disability resulting in functional disability, the application of multiplier method by the learned Tribunal cannot be faulted. The learned Tribunal had also taken the notional income of the minor claimant only at Rs.5000/-p.m which in the considered view of this Court, is just and appropriate. Relying on the **Sarla Verma's case and Pranay Sethi's case**, 40% of the amount is added towards future prospects and compensation for the loss of earning capacity due to the disability was assessed at Rs.7000/- x 12 x 15 x 33/100 = Rs.4,15,800/-. This Court is of the view that this compensation awarded under the head of loss of earning capacity due to the functional disability, is correct. However, this Court is of the view that a sum of Rs.50,000/- is awarded under the head of loss of convenience apart from compensation awarded under the head of loss of earning capacity due to functional disability, is not correct. Therefore, the award of Rs.50,000/- under the head of loss of convenience is not appropriate and the same is set aside. The other amounts awarded under the head of medical expenses at Rs.500/-, pain and suffering at Rs.50,000/-, transport expenses at Rs.5000/-, attendant charges at Rs.50,000/- and extra nourishment at Rs.10,000/-, considering the nature of the injuries suffered by the first respondent/claimant and surgical treatment



undergone by him, needs no interference and the same are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of earning capacity	Rs. 4,15,800/-/-	Rs. 4,15,800/-	Same
2	Medical expenses	Rs.500/-	Rs.500/-	same
3	For loss of convenience	Rs.50,000/-	-----	Not awarded
4	Pain and suffering	Rs.50,000/-	Rs.50,000/-	Same
5.	Transport Expenses	Rs.5,000/-	Rs.5,000/-	same
6	Attendant Charges	Rs.50,000/-	Rs.50,000/-	Same
8	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Same
9	Total	Rs. 5,81,300/-	Rs.5,31,300	reduced

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.5,81,300/- to Rs.5,31,300/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization. The appellant/Insurance Company and second respondent herein are directed to deposit the above said award amount together with accrued interest and costs within a period of four weeks from the



date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to deposit the award amount so deposited, in an interest bearing fixed deposit, in any one of the nationalized Bank, initially for a period of three years, renewable thereafter, till the minor attains majority. The mother and next guardian, Pushparani is permitted to withdraw interest from the above said deposit, once in three months, directly from the bank and utilize the same for the welfare of the minor boy. Deficit Court fee, if any, shall be paid by the first respondent/minor claimant, represented by his mother and next guardian Pushparani, before the Registry. Only on such payment of the deficit court fee, Registry is directed to draft the decree in this appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

1.The Special Sub-Judge,
(Motor Accidents Claims Tribunal)
Tirunelveli.

2.The Record Keeper,



Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.1017 OF 2023
and
C.M.P(MD)No.14022 of 2023**

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