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C.M.A.No.1351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1351 of 2022

Harini(minor)

(rep. by mother and next friend S.Geetha)

...Appellant/petitioner

Vs

1.Pooja Malhotra

2.United India Insurance Co. Ltd.,

Silingi Building, New no.134, Old no.40-45,

Greams Road, Chennai-600 006.

.....Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP.No.3744 of 2017 dated 22.01.2022 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant : Ms.Ramya V. Rao

For Respondent : Ms.R.Rathna Thara for R2



C.M.A.No.1351 of 2022

JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant, seeking enhancement of the compensation awarded by the Tribunal vide order dated 22.01.2022 in M.C.O.P.No.3744 of 2017.

2. On 29.05.2017 at about 17.30 hours, when the minor claimant, the appellant herein, as a pedestrian, was proceeding at behind Santhome Church Service Road, the 1st respondent's vehicle bearing Registration No.TN-01-AY-7508 came in a rash and negligent manner and dashed against the claimant. As a result of which, the claimant sustained grievous injuries all over her body. The claimant moved a petition before the Tribunal, seeking compensation of Rs.1,00,00,000/-.

3. On consideration of both oral and documentary evidence, the Tribunal had awarded the compensation on the following heads:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Disability	2,00,000
2	Medical Expenses	7,18,600
3	Pain and Sufferings	50,000
4	Transport & extra nourishment	20,000



C.M.A.No.1351 of 2022

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
	Expenses	
5	Loss of amenities	50,000
6	Attendant charges	10500
7	Loss of Education	20000
	Total	10,69,100/-

4. The learned counsel for the appellant/claimant would submit that at the time of accident, the claimant had sustained head injury, diffused axonal injury, multiple focal Hemorrhage and multiple grievous injuries all over her body and the Doctor, who treated the claimant had assessed disability at 40%. She would further submit that the disability of diffuse axonal injury is worsening day- by- day and also the Curvature of the spine (SPO-2) was dropped. She pointed out that at the time of accident, the claimant was aged 4 years and now, she is 9 years of old.

5. However, on earlier occasion, considering the fact that the disability certificate Ex.C1 was hand written and not clear as regards the disability assessed at 40% whether it is permanent or partial, this Court vide order, dated 24.07.2023, referred the claimant girl to the Medical Board in order to determine her disability.



C.M.A.No.1351 of 2022

WEB COPY

6. Pursuant to the direction of this Court, the Medical Board examined the claimant and filed a report dated 28.11.2023, wherein, the disability is assessed as follows:

“Post traumatic sequelae-Diffuse axonal injury
Locomotor disability – 60% (Sixty percent)

7. Now, by referring to the above mentioned Report and Disability Certificate (Ex.C1), the learned counsel for the appellant would submit that the disability of the claimant has been increasing day-by-day as the child grows, consequently the disability is also growing. Considering this aspect, the Medical Board has assessed the disability at 60%. The learned counsel would further point out that this disability continues and it will have considerable impact when the claimant girl attains puberty. While so, the Tribunal, without considering all these aspects, has simply determined the compensation towards disability by fixing the same at 40% and applying the *per centage* method (Rs.5000/- for each *per centage*), which is very low. Therefore, she would contend that considering the nature of the injuries and disability sustained by the claimant, the Tribunal ought to have adopted multiplier method instead of *per centage*

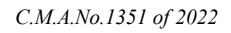


method. Hence, she would urge this Court to adopt the multiplier method and determine the just and reasonable compensation. She would further submit that no amount has been awarded towards 'future medical expenses' and also towards 'loss of marital prospects' and hence, she urged this Court to grant the compensation under these heads.

8. In reply, the learned counsel for the 2nd respondent/Insurance Company would submit that the amount awarded by the Tribunal is just and fair and the same may be confirmed. She submits that in any event, if this Court is going to apply multiplier method, Rs.5000/- may be taken towards notional income instead of any other higher amount including future prospects. Further, she submits that with regard to the other heads, any reasonable compensation may be awarded in accordance with the dictum of the Hon'ble Apex Court.

9. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

10. In the present case, originally, the disability certificate (Ex.C1) was



6/14



unfortunately, the Tribunal, without considering all these aspects, has simply adopted *per centage* method by fixing Rs.5000/- (per each centage) and awarded a sum of Rs.2,00,000/- taking 40% as functional disability, which in the opinion of this Court is too low and the same requires to be re-determined and enhanced appropriately.

11. In an accident, if a person losses a limb or eye or spinal cord or sustains an injury of grievous nature, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye or spinal cord in isolation, but only values the totality of the harm which the loss has entailed towards **loss of amenities of life and infliction of pain and suffering, the loss of the good things of life, joys of life and the positive infliction of pain and distress.** In the present case, as observed above, it is not in dispute that the claimant suffered disability though initially at 40%, which has been increasing simultaneously upon the growth of the claimant and at present it reached to 60% as could be seen from the Report submitted by the Medical Board and in future also, it continues. Therefore, taking into consideration of these aspects and also the loss of good things and joy of life sustaining by the claimant in her life time



and since the disability is worsening day by day and as the Medical Board assessed the functional disability at 60%, this Court is inclined to award the compensation by taking 60% as functional disability.

12. Generally, by following the dictum of the Hon'ble Apex Court in *Sarla Verma* case, the Tribunals and the Courts used to adopt the multiplier method while computing the compensation in respect of motor accident cases where death occurred. Recently, the Kerala High Court in “*Oriental Insurance Co. Ltd. V. Abdul Khader*, 2023 SCC OnLine Ker 5686, decided on 27-07-2023] has categorically held that while computing compensation in motor accident cases, the multiplier method proposed by the Supreme Court in “*Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121*” remains applicable even if the accident resulted in serious injuries instead of death. In para 11, it has been observed as under:

“11. It is true that *Sarla Verma* (supra), *Reshma Kumari* (supra) and *Pranay Sethi* (supra), they are all dealing with death cases. The moot question is whether the dictum as regards the multiplier method laid down in *Sarla Verma* (supra), approved in *Reshma Kumari* (supra) and reiterated by the Constitution bench in *Pranay Sethi* (supra), would undergo any change, if the result of the



accident is an injury, instead of a death. This Court is of the definite opinion that it would not. The very purpose of adopting the multiplier method in *Sarla Verma* (supra) is to do away with the considerable variation and inconsistency in assessing compensation and also to bring uniformity and consistency. In *Sarla Verma* (supra), the Honourable Supreme Court had gone to the extent of holding that, even if the evidence may indicate a different percentage of increase, it is necessary to standardise to avoid different yardsticks being applied or different methods of calculation being adopted. It is this logic, which has been approved in *Reshma Kumari* (supra) and reiterated in *Pranay Sethi* (supra). In *Pranay Sethi* (supra) as indicated earlier, the Honourable Supreme Court specifically concurred with *Sarla Verma* (supra) and *Reshma Kumari* (supra) and opined that following the multiplier method will subserve the cause of justice, avoiding unnecessary contentions before the Tribunals and Courts. If this be the logic for adopting the multiplier method, can any change in the legal position be conceded for the reason that the result of the accident is an injury - especially in cases of serious injuries as available in the present case - instead of a death? The answer to the above question is surely negative, in the estimation of this Court, having regard to the logic and purpose behind adopting the multiplier method.”

13. Following the above and the very purpose of adopting the multiplier method in *Sarla Verma* (supra) is to do away with the considerable variation



C.M.A.No.1351 of 2022

and inconsistency in assessing the compensation and also to bring uniformity and consistency and further taking note of the injuries sustained by the claimant minor girl which are grievous in nature and the disability has been worsening day-by-day and increasing simultaneously along with the growth of the claimant, this Court is inclined to adopt the multiplier method.

14. The Hon'ble Apex Court, for the accident occurred in the year of 2007 has taken minimum wages as notional income of the minor child and further, added 40% as future prospects. In the present case, the accident occurred in the year 2017. However, the minimum wages appears to be on the higher side, this Court is inclined to fix Rs.6000/- as notional income of the appellant/minor girl and by adding 40% towards future prospects, it would be at a sum of Rs.8400 (6000+2400). It is settled law that so far as minors are concerned, since they are non earning members and there is no occasion for them to spend money towards their personal expenses and therefore, there cannot be any deduction towards their personal expenses. In the present case, admittedly, the appellant is the minor and hence, no amount towards the personal expenses can be deducted. At the time of accident, the minor child was



C.M.A.No.1351 of 2022

about 4 years old, therefore, the multiplier applicable is 15. Taking into consideration the functional disability at 60%, the loss towards disability is determined as follows:

$$\text{Rs.}8400 \times 60/100 \times 12 \times 15 = \text{Rs.}9,07,200/-$$

15. The amount awarded for pain and sufferings awarded by the Tribunal at a sum of Rs.50000/- appears to be low and hence, this Court feels it appropriate to enhance the same to Rs.75,000/-. The compensation awarded by the Tribunal in respect of other heads, in the opinion of this Court, is just and reasonable and therefore, the same stands confirmed. No amount was awarded towards future prospects, therefore, taking into consideration that the disability is worsening day-by-day and increasing simultaneously along with the growth of the appellant which would have considerable impact on the appellant throughout her life, I am inclined to grant Rs.1,00,000/- towards future medical expenses and Rs.1,00,000/- towards loss of amenities and marital prospectus.

16. Accordingly, the compensation awarded by the Tribunal is modified as follows:



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C.M.A.No.1351 of 2022

S.No	Particulars	Compensation awarded by the Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Disability	2,00,000	9,07,200
2	Medical Expenses	7,18,600	7,18,600
3	Pain and Sufferings	50000	75,000
4	Transport Expenses & Extra nourishment	20,000	20,000
5	Future Medical Expenses	Nil	1,00,000
6	Attendant charges	10,500	10500
7	Loss of amenities	50000	50000
8	Loss of education	20000	20000
9	Loss of amenities and marital prospectus.	Nil	1,00,000
	Total	10,69,100	20,01,300

17. Accordingly, the award amount stands enhanced from a sum of Rs.10,69,100/- to Rs.20,01,300/-.

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit total enhanced compensation amount of Rs.20,01,300/- along with interest and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.3744 of 2017 on the file of the Motor



C.M.A.No.1351 of 2022

Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai. Further, the claimant shall pay necessary Court fee, if any, on the enhanced compensation.

19. The learned counsel for the appellant would submit that already Rs.10,69,100/- has been withdrawn by the mother of the appellant towards the medical expenses incurred for the appellant. Now the remaining entire amount (after the deposit being made by the 2nd respondent) shall be deposited in any one of the Nationalized Banks under the cumulative deposit of the natural guardian and next friend i.e., mother of the appellant minor. After attaining majority of the appellant minor, the entire amount shall be transferred to the account of the appellant namely, Harini. No costs.

04.03.2024

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
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C.M.A.No.1351 of 2022

KRISHNAN RAMASAMY,J.

Dn

To:

The Motor Accident Claims Tribunal,
III Judge, Court of Small Causes, Chennai

C.M.A.No.1351 of 2022

04.03.2024