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Civil Miscellaneous Appeal Nos.1648 & 1649 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1648 & 1649 of 2024

Nithya

D/o.Samikannu

... Appellant in C.M.A.No.1648/2024

[Sole appellant declared as major and her father
Samikannu discharged from guardianship *vide*
Court order dated 12.09.2023 made in C.M.P.
No.16111 & 16114 of 2023 in C.M.A.Sr.No.
80480 of 2023 by this Court]

Samikannu

S/o.Siluvaimuthu

... Appellant in C.M.A.No.1649/2024

Vs.

1.Bhuvaneshwaran
S/o.Rajendren

2.The Manager,
IFFCO TOKIO General Insurance
Company Limited,
Sri Nivasam Arcad,
1st Floor, 9/4, Athvaitha Ashramam Road,
Salem - 636 004.

... Respondents in both

[The first respondent remained *ex parte* before appeals
the Tribunal. Hence, notice may be dispensed with]



Civil Miscellaneous Appeal Nos.1648 & 1649 of 2024

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2022 made in M.C.O.P.Nos.9 & 8 of 2020 on the file of Motor Accident Claims Tribunal, Sub Judge, Rasipuram.

For Appellants : Mr.C.Thangaraju
[in both appeals]

For Respondents : Mr.J.Michael Visuvasam [R2]
[in both appeals]

COMMON JUDGMENT

These appeals arise out of a common award passed by Motor Accident Claims Tribunal, Sub Judge, Rasipuram, passed in M.C.O.P.Nos.9 & 8 of 2020, dated 14.07.2022.

2. The claimant in M.C.O.P.No.8 of 2020 is the father of the claimant in M.C.O.P.No.9 of 2020. He was riding a two wheeler on 11.12.2019 and it is stated that his daughter was the pillion rider. They were travelling at Namakkal - Salem Bypass road and at about 08.15 a.m., when the vehicle came near the place of occurrence, the offending vehicle, a two wheeler, came in a rash and negligent manner and dashed on the vehicle ridden by the claimant in M.C.O.P.No.8 of 2020. In the said accident, the claimant in M.C.O.P.No.8 of 2020 sustained grievous



injuries and the Medical Board assessed the disability at 5%. Insofar as the claimant in M.C.O.P.No.9 of 2020, she is said to have sustained fracture in the hip. It is under these circumstances, two independent claim petitions came to be filed before the Tribunal seeking compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.1,36,513/- in M.C.O.P.No.8 of 2020 under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical bills	41,513/-
2.	Pain and suffering	30,000/-
3.	Disability	25,000/-
4.	Loss of income	20,000/-
5.	Extra nourishment	5,000/-
6.	Transportation expenses	5,000/-
7.	Loss of amenities	5,000/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
8.	Attending charges	5,000/-
	Total	1,36,513/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

4. Insofar as M.C.O.P.No.9 of 2020 is concerned, the Tribunal came to a conclusion that the very involvement of the claimant in the accident is highly doubtful and therefore, the Tribunal proceeded to dismiss the claim petition.

5. These appeals have been filed aggrieved by the award passed by the Tribunal.

6. Heard Mr.C.Thangaraju, learned counsel for appellants and Mr.J.Michael Visuvasam, learned counsel for second respondent insurance company.



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7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. Insofar as C.M.A.No.1649 of 2024 is concerned, it arises against the award passed in M.C.O.P.No.8 of 2020. The accident had taken place in the year 2019 and the Tribunal while adopting per percentage method, has fixed only a sum of Rs.5,000/- per percentage. Considering the judgment of the Division Bench of this Court in ***C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others]***, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'disability' is fixed at Rs.35,000/- (7000 * 5).

10. The compensation granted under the other heads is reasonable and it does not require the interference of this Court.



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11. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Medical bills	41,513/-	41,513/-
2.	Pain and suffering	30,000/-	30,000/-
3.	Disability	25,000/-	35,000/-
4.	Loss of income	20,000/-	20,000/-
5.	Extra nourishment	5,000/-	5,000/-
6.	Transportation expenses	5,000/-	5,000/-
7.	Loss of amenities	5,000/-	5,000/-
8.	Attending charges	5,000/-	5,000/-
	Total	1,36,513/-	1,46,513/-

12. The compensation awarded by the Tribunal at Rs.1,36,513/- is enhanced to Rs.1,46,513/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.10,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 221 days as was



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ordered by this Court in C.M.P.No.23951 of 2023 in C.M.A.Sr.No.80479 of 2023 dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

13. It is made clear that the Tribunal had invoked the principle of pay and recover on the ground that the driver of the offending vehicle did not possess valid driving license and hence, it is left open to the second respondent insurance company to pay the compensation and recover the same from the first respondent.

14. C.M.A.No.1648 of 2024 arises out of the award passed in M.C.O.P.No.9 of 2020. This Court, on carefully going through the award passed by the Tribunal, finds that the Tribunal has assigned sufficient reasons as to why the involvement of the claimant in this case is highly suspicious. The accident had taken place in this case on 11.12.2019, whereas, the claimant got herself admitted on 19.12.2019. If really the claimant in this case sustained fracture in the hip, there is absolutely no



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material to show as to what happened during the period from 11.12.2019 to 19.12.2019. The finding of the Tribunal does not require the interference of this Court.

In the result, C.M.A.No.1648 of 2024 is dismissed and C.M.A.No.1649 of 2024 is partly allowed. No costs.

15.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Sub Judge, Rasipuram.

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