



C.M.A.No.2975 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2975 of 2021

Minor.G.Dharsini

(Rep. by her Guardian/Next Friend/Mother G.Rani)

...Appellant

Vs.

1.R.Rangasamy

2.M/s.National Insurance Company Ltd.,

Hero Vertical, 101-106,

BMC House N-1, Connaught Place,

New Delhi – 100 001.

...Respondents

(The 1st respondent remained ex-parte before the Tribunal; hence notice may be dispensed with for the 1st respondent in this Appeal)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2019



C.M.A.No.2975 of 2021

made in M.C.O.P.No.07 of 2015, on the file of MACT/Chief Judicial Magistrate Court at Namakkal.

For Appellant : Mr.M.Lokesh

For Respondents : Mr.S.Vadivel for R2
R1 – NDW vide dated 01.10.2021

J U D G M E N T

This appeal is filed by the appellant challenging the judgment and decree passed by the Motor Vehicle Accidents Claims Tribunal, MACT/Chief Judicial Magistrate Court at Namakkal in M.C.O.P.No.07 of 2015, dated 12.12.2019.

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

3.The petitioner is the claimant, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

4. The brief facts of the case are as follows:



C.M.A.No.2975 of 2021

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On 30.08.2014, at about 10.00 a.m., the petitioner was travelling as a pillion rider in the two wheeler bearing Registration No.TN 47 AZ 9176 on Mudalaipatti to Kadapalli Main Road and when the petitioner was nearing RTO office, the rider drove the vehicle in a rash and negligent manner had applied its break to avoid hit against a dog, the said two wheeler was capsized and caused the accident. A criminal case was registered in Crime No.298/2014 for the offence under Sections 279, 337 of IPC by Nallipalayam Police. The claimant represented by her mother filed a claim petition before the Tribunal in M.C.O.P.No.07 of 2015, the Tribunal has awarded a compensation after deducting 20% negligence for a sum of Rs.68,500/- as compensation. Challenging the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant submitted that the Tribunal has fixed 20% negligence on the petitioner. Learned counsel appearing for the appellant further submitted that the Tribunal has



C.M.A.No.2975 of 2021

awarded only a meagre amount as compensation and requested this Court to enhance the compensation. Hence, he prayed to allow the appeal.

6.Learned counsel appearing for the second respondent submitted that after examining the oral and documentary evidence, the Tribunal has awarded a compensation which is just and reasonable and hence, he prayed to dismiss the appeal.

7.Heard learned counsel appearing for the appellant as well as second respondent and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only seeking enhancement of compensation. Hence, there is no need for any discussion with regard to negligence aspect.

9.Before the Tribunal, the petitioner's mother was examined as PW1 and the Doctor who treated the petitioner was examined as PW2 and on the side of the petitioners, 10 documents were marked as Exs.P1 to P10.



C.M.A.No.2975 of 2021

On the side of the respondents, no witness was examined and no document was marked.

10.The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.24,000/- for permanent disability, Rs.21,587/- for medical bills, Rs.30,000/- for pain and suffering, Rs.5,000/- for extra nourishment and Rs.5,000/- for transport expenses after deducting 20% negligence arrived at a total compensation of Rs.68,500/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

11.Perusal of records reveal that the injured was aged 8 years and she was a student at the time of the accident.

12.The Tribunal has not awarded any amount under the head attender charges. Accordingly, this Court is inclined to award Rs.5,000/- for attender charges. The amount awarded under the head pain and suffering and transport expenses, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded under the head pain and suffering is



C.M.A.No.2975 of 2021

enhanced to Rs.40,000/- and the amount awarded under the head transport expenses is enhanced to Rs.10,000/-.

13. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Permanent disability (8 % x Rs.4,000/- each percentage)	24,000/-	32,000/-
2.	Medical bills (Ex.P-5 series)	21,587/-	21,587/-
3.	Pain & Suffering	30,000/-	40,000/-
4.	Extra nourishment	5,000/-	10,000/-
5.	Transport expenses	5,000/-	5,000/-
6.	Attender charges	-	5,000/-
	Total	85,600/-	
	20% contributory negligence	Rs.68,500/-	Rs.1,13,587/-

14. The appellant is entitled to total compensation of Rs.1,13,587/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.



C.M.A.No.2975 of 2021

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15.The judgment and decree passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.07 of 2015 dated 12.12.2019, is modified to the above extent.

16.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to her majority. If the appellant is still minor, her share shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until she attains majority and the interest derived from out of the said share of the minor shall be paid to the mother every quarter to be utilized for the welfare of the said minor.

17.The appellant/claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/claimant is directed to pay the requisite Court fee for the enhanced compensation



C.M.A.No.2975 of 2021

WEB COPY

amount, if required. The Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Namakkal, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellant/claimant.

18.The Civil Miscellaneous Appeal is partly allowed with the above terms. No costs.

29.11.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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C.M.A.No.2975 of 2021

To

- 1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate Court at Namakkal.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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C.M.A.No.2975 of 2021

M.DHANDAPANI, J.

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C.M.A.No.2975 of 2021

29.11.2024