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C.M.A.No.1997 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1997 of 2024

Minor Puviyarasu

Represented by his

Next friend/Guardian/Father Prabhu

... Appellant

..Vs..

1.Manikandan

2. Divya

3. The New India Assurance Company Limited,

Saron Building, East Veli Street,

Madurai

...Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed by the Motor Accidents Claims Tribunal/Special Subordinate Judge No.II, Salem, in M.C.O.P.No.469 of 2021 dated 22.09.2022.

For Appellant : Mr.T.S. Arthanareeswaran

For R3 : Mr.M. Krishnamoorthy

R1 & R2 : Notice dispensed with.

### **JUDGMENT**

The appellant Minor Puviyarasu, who is represented by his father Prabhu, filed a Claim Petition in M.C.O.P.No.469 of 2021 on



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the file of the Motor Accidents Claims Tribunal / Special Subordinate Court No.II, Salem, under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.15,00,000/- for the injuries sustained by him, in a road accident that took place on 06.08.2020.

2. The brief case of the appellant/claimant is as follows:

2.1. On 06.08.2020, at about 5.30 p.m., the minor Puviyarasu was standing on Nadupatti diversion Road on Salem-Dharmapuri National Highways with a bicycle. A speeding Tipper lorry bearing Registration No.TN 30 BU 8086, owned by the second respondent and driven by the first respondent, hit the minor Puviyarasu, as a result of which he sustained injuries all over his body. He was immediately rushed to a nearby hospital.

2.2. According to the claimant minor Puviyarasu was studying VIII standard on the date of accident and that the accident took place on account of rash and negligent driving of the driver of the Tipper lorry bearing Registration No.TN 30 BU 8086. It is also his contention that since the said lorry was insured with the third respondent, the New India



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Assurance Company Limited, Madurai, the owner of the Tipper lorry (the second respondent) as well as the third respondent/Insurance Company are jointly and severally liable to pay compensation to the injured.

3. The respondents 1 and 2 remained absent before the Tribunal and were set *ex parte*. The third respondent/Insurance Company contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, vide its orders dated 22.09.2022, directed the third respondent/Insurance Company to pay a compensation of Rs.1,66,000/- to the claimant together with interest at the rate of 7.5% per annum. Seeking to enhance the compensation awarded by the Tribunal, the present appeal is filed by the claimant.

5. Heard Mr.T.S. Arthanareeswaran, learned counsel for the appellant and Mr.M. Krishnamoorthy, learned counsel for the third respondent.



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6. Mr.T.S. Arthanareeswaran, learned counsel for the appellant/claimant contended that the injured was studying VIII standard on the date of accident and though he sustained a fracture on 2<sup>nd</sup> Metacarpal bone and the Medical Board also assessed his partial permanent disability as 10%, the Tribunal has fixed only a sum of Rs.5000/- per percentage. The learned counsel for the appellant, relying on the decision of this Court in C.M.A. No.1661 of 2024, dated 15.07.2024 ( Murali Vs. Murasu and another), contended that this Court had fixed a sum of Rs.8,000/- per percentage for the accident that took place in the year 2021. He therefore contended that awarding a sum of Rs.7,000/- per percentage towards partial permanent disability in the present case would meet the ends of justice.

7. Per contra, Mr.M. Krishnamoorthy, learned counsel appearing for the third respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.



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8. The tribunal had adopted per percentage method and fixed a sum of Rs.5,000/- per percentage for partial permanent disability. The accident took place in the year 2020 and therefore, following the decision of the single Judge of this Court, I am inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, compensation under the head of disability is fixed at Rs.70,000/- (Rs.7,000/- x 10 = Rs.70,000/-). It is pertinent to point out that the claimant was aged 12 years on the date of accident and he had a fracture on his right forearm. In the circumstances, a sum of Rs.25,000/- is awarded towards pain and sufferings. The amounts awarded under the other heads by the Tribunal shall remain in tact. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court.

| <b><i>S.No</i></b> | <b><i>Heads</i></b>                | <b><i>Amount awarded<br/>by Tribunal<br/>(Rs)</i></b> | <b><i>Amount<br/>awarded by this<br/>Court<br/>(Rs)</i></b> |
|--------------------|------------------------------------|-------------------------------------------------------|-------------------------------------------------------------|
| 1.                 | Partial Permanent Disability (10%) | 50,000/-<br>(Rs. 5,000/- per percentage)              | 70,000/-<br>(Rs. 7,000/- per percentage)                    |
| 2.                 | Pain and sufferings                | 10,000/-                                              | 25,000/-                                                    |
| 3.                 | Loss of amenities                  | 10,000/-                                              | 10,000/-                                                    |
| 4.                 | Medical Expenses                   | 60,000/-                                              | 60,000/-                                                    |



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| <i><b>S.No</b></i> | <i><b>Heads</b></i>    | <i><b>Amount awarded<br/>by Tribunal<br/>(Rs)</b></i> | <i><b>Amount<br/>awarded by this<br/>Court<br/>(Rs)</b></i> |
|--------------------|------------------------|-------------------------------------------------------|-------------------------------------------------------------|
| 5.                 | Transportation charges | 10,000/-                                              | 10,000/-                                                    |
| 6.                 | Extra nourishment      | 10,000/-                                              | 15,000/-                                                    |
| 7.                 | Attender's charges     | 15,000/-                                              | 15,000/-                                                    |
| 8.                 | Damages to clothes     | 1,000/-                                               | 1,000/-                                                     |
|                    | <b>TOTAL</b>           | <b>1,66,000/-</b>                                     | <b>2,06,000/-</b>                                           |

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,66,000/- to Rs.2,06,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,66,000/- to Rs.2,06,000/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to



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draft the decree only after the receipt of Court fee.

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(iv) The third respondent, the New India Assurance Company Limited, Madurai, is directed to deposit the enhanced compensation amount i.e., Rs.2,06,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.469 of 2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Court No.II, Salem, within a period of four weeks from the date of receipt of a copy of this order.

(v) Since the claimant is a minor, the compensation amount, after deducting the medical expenses of Rs.60,000/-, is ordered to be deposited in a nationalized bank till the minor attains majority and the medical expenses of Rs.60,000/- is ordered to be transferred to the bank account of the father of the claimant, after following due process of law.

**07.08.2024**

Index : Yes/No  
Internet : Yes/No  
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To

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1. The Special Subordinate Judge No.II,  
Motor Accident Claims Tribunal, Salem.
2. The New India Assurance Company Limited,  
Saron Building, East Veli Street,  
Madurai
3. The Section Officer, VR Section, High Court, Madras.



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**R. HEMALATHA, J.**

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