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C.M.A.No.2448 of 2023

**IN THE HIGH OF JUDICATURE AT MADRAS
DATED : 15.03.2024**

**Coram
The Hon'ble Mr.Justice Krishnan Ramasamy**

C.M.A.No.2448 of 2023

K.Subarakshitha
(minor rep by her mother and
next friend K.Manjula).

... Appellant

Vs.

1. M/s. Empee Distillors Ltd (Exparte)
Empee Towers, No.59, Harris Road,
Pudupet, Chennai – 600 002.
2. United India Insurance Co. Ltd.,
Silinghi Building, No.134, Greaves Road,
Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.04.2023 made in M.C.O.P.No.291 of 2014, on the file of the Motor Accident Claims Tribunal/Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Mr.R.Mohan Babu

Respondent-1 : Notice Dispensed with



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For Respondent-2 : Mr.S.Arun Kumar

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JUDGEMENT

This instant Appeal is preferred against the award passed by the Motor Accident Claims Tribunal (hereinafter, referred to as the 'Tribunal') in M.C.O.P.No.291 of 2014,dated 18.04.2023.

2. On 23.05.2013, at about 01.00 hours, when the appellant/claimant was standing at the Bus stop at Egmore, Government Maternity Hospital, a Car bearing Reg.No.TN-01-X-5959, belonging to the first respondent, driven by its driver came in a rash and negligent manner from South to North direction on Panthian Road, and dashed against i) a Police Car, ii) the appellant/claimant and another three child; iii) one Motor Cycle and iv) Autoriksha and in the said accident, the appellant/claimant, who was a minor aged about 10 years, sustained grievous injured. Hence, the minor represented by her mother, K.Manjula filed a Claim Petition seeking a sum of Rs.17,00,000/- as compensation.



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3. The Tribunal, on consideration of both oral and documentary evidence held that the accident occurred due to rash and negligent driving of the Car, bearing Regn-No.TN-01-X-5959, belonging to the first respondent and hence, directed the insurer to pay a compensation of Rs.3,70,200/- to the claimant together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of deposit and to recover the same from the owner of the offending vehicle. The break up details of the award passed by the Tribunal under various heads are as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Tribunal Award</i>
1	Disability	Rs 45,000/-
2	Pain and Sufferings	Rs. 50,000/-
3	Transportation	Rs. 6,000/-
4	Medical Expenses	Rs.1,22,481/-
5	Extra Nourishment	Rs. 10,000/-
6	Attender's Chargers	Rs. 11,700/-
7	Loss of Amenities	Rs. 20,000/-
8	Future Medical Expenses	Rs 75,000/-
9	Loss of Matrimonial Expectation	Rs. 30,000/-
Total		Rs.3,70,181/-
Rounded off		Rs.3,70,200/-



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4. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.

5. Since the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

6. Mr.R.Mohan Babu, learned counsel for the appellant/claimant would submit that at the time of the accident, which occurred in the year 2013, the appellant was a minor, aged about 10 years, studying fifth STD and after completion of her studies, she was expected to earn a monthly income of Rs.20,000/- in future; that, however, on account of the accident, the appellant's sustained head injury with poly trauma, proximal humerus fracture, left clavicle fracture and laceration all over the body; though the disability sustained by the appellant were grievous in nature, the Medical Board issued a Disability Certificate, Ex.C.1, assessing the disability sustained by the appellant only at 15%, without even mentioning as to



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whether the disability sustained by her is functional disability or other and the Tribunal also, based on the same, while computing compensation towards Disability has adopted percentage method instead of applying multiplier method, which resulted in awarding an inadequate compensation of Rs.45,000/- towards Disability. Hence, the learned counsel prayed to re-determine the compensation awarded by the Tribunal towards Disability by adopting multiplier method.

6.1 The learned counsel would also submit that the compensation awarded by the Tribunal under other heads also not adequate, and sought for proper enhancement.

7. Per contra, Mr.S.Arun Kumar, learned counsel for the second respondent/Insurance Company would submit that though the appellant/claimant has stated before the Tribunal that due to the accident, she was affected with a functional disability, she having failed to establish the same by way of oral and documentary evidence, the Tribunal rightly determined the compensation towards Disability by applying percentage



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method and the same requires no interference of this Court. The learned counsel further submitted that even the compensation awarded by the Tribunal under other heads are just & fair and requires no interference.

8. I have given due consideration to the submissions made by the learned counsel appearing for the appellant/claimant and learned counsel for the second respondent/Insurance Company and perused the materials available on record.

9. In the present case, there is no dispute with regard to the occurrence of the accident, fixation of liability and fastening of liability and the dispute is only in regard to the compensation awarded by the Tribunal towards Disability and other heads.

Disability :-

10. According to the learned counsel for the appellant, due to the accident, which occurred on 23.05.2013, the appellant, who was a minor girl, aged about 10 years, sustained Crush Injury in her Right Arm, Grade



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III Compound Fracture Distal Humerus right, Undisplaced fracture radial head right, fracture in left clavicle; laceration in the left side head; that she was admitted in Soundarapandian Hospital, Chennai, for five times, i.e. from i) 23.05.2013 to 29.05.2013; ii) 29.05.2013 to 12.06.2013; iii) 18.06.2013 to 22.06.2023 iv) 24.07.2013 to 01.08.2013 and 08.05.2014 to 12.05.2014, during which period, she was treated as inpatient and many surgeries were performed and implant fixed; that, though the injuries sustained by the appellant is grievous in nature, the Medical Board had blindly assessed the disability sustained by the appellant/claimant only at 15%; that the Tribunal also based on the same, determined the compensation towards Disability by adopting percentage method, and awarded only a sum of Rs.45,000/- under the said head, and hence, the learned counsel insisted this Court to re-determine the compensation towards Disability by applying multiplier method.

10.1 Therefore, this Court in order to find out the veracity of the disability sustained by the appellant, directed the appellant/injured to appear before this Court. Accordingly, the appellant/claimant has appeared before



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this Court today (15.03.2024) and it is apparent that due to the accident, the appellant sustained crush injury in her right arm, resulting not only in disfigurement at the right elbow and scar but also slight restriction in movement on her right hand as consequence thereof, she gets pain during travel, and she is unable to lie down on the right side and is finding difficult to do any routine work as she did before. Therefore, this Court is of the view that the Tribunal has committed an error in determining compensation towards Disability by adopting percentage method. Hence, this Court is inclined to re-determine the compensation towards Disability by adopting multiplier method instead of percentage method.

10.2 Insofar as the disability is concerned, though as per Ex.C.1, disability was assessed at 15%, this Court is inclined to take the disability only at 10%, instead of 15%, in the absence of any material available to show as to whether the disability sustained by the appellant/claimant is permanent or temporary. So far as the notional income is concerned, considering the fact that the appellant was a minor girl at the time of the accident, (i.e in the year 2013), and was studying 5th Std, and it is no doubt



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true that the appellant would earn more than a sum of Rs.10,000/- per month, however, this Court deems that it would be just and proper to fix a sum of Rs.8,000/- per month. Thus, by fixing the notional monthly income of the appellant at Rs.8,000/-; adding 40% towards future prospects; applying right multiplier of '15' (since the injured was aged 10 years) and taking the disability at 10%, the compensation towards 'Loss of Future Income due to Disability' is calculated as under:-

(Notional Monthly income + 40% future prospects x 15 Multiplier x 12 x 10% Disability)

$$\text{Rs.8,000/-} + \text{Rs.3,200/-} \times 15 \times 12 \times 10/100 = \text{Rs.2,01,600/-}$$

10.3 Consequently, the sum of Rs.45,000/- awarded by the Tribunal under the head of 'Disability' is hereby modified and enhanced to **Rs.2,01,600/-**.

10.4 Except the modification made under the head, 'Loss of Income due to Disability' the award of compensation passed by the Tribunal under



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other heads remain unaltered as the same appears to be just and reasonable.

As far as the pay and recover theory ordered by the Tribunal is concerned, the same also stands confirmed.

11. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-

<i>Sl, No.</i>	<i>Heads</i>	<i>Tribunal Award</i>
1	Loss of income due to Disability	Rs 2,01,600/-
2	Pain and Sufferings	Rs. 50,000/-
3	Transportation	Rs. 6,000/-
4	Medical Expenses	Rs.1,22,481/-
5	Extra Nourishment	Rs. 10,000/-
6	Attender's Charges	Rs. 11,700/-
7	Loss of Amenities	Rs. 20,000/-
8	Future Medical Expenses	Rs 75,000/-
9	Loss of Matrimonial Expectation	Rs. 30,000/-
Total		Rs.5,26,081/-

11.1 Consequently, the total compensation amount of Rs.3,70,200/- awarded by the Tribunal is hereby modified and enhanced to **Rs.5,26,081/-**



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which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

12. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount directly to the appellant's/claimant's respective bank accounts through RTGS within a period of three weeks thereon.



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(iii) The appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) The appellant/claimant is directed to pay the Court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

15.03.2024

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To

The Special Sub Judge No.1,
Small Causes Court,
Motor Accident Claims Tribunal, Chennai.



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Krishnan Ramasamy,J.,

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