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Civil Miscellaneous Appeal No.1398 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1398 of 2024

Minor Thavasi

... Appellant

Vs.

1. Kasivelu

2. The Manager,
The New India Assurance Company Limited,
Commercial complex, CSI Building No.1,
Officers Line, Vellore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 18.07.2022 made in MACTOP No.273 of 2017 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (in the Court of Special Sub Court, Thiruvannamalai).

For Appellant : Mrs.A.Subadra

For Respondent : R1- Exparte
Mr.J.Michael Visuvasam for R2



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JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal, has filed this appeal, challenging the award passed in MACTOP No.273 of 2017 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai (in the Court of Special Sub Court, Thiruvannamalai).

2. The claimant is a minor, who was aged about 15 years and was represented by his father. The case of the claimant is that on 03.02.2017, he was traveling as a pillion rider along with his friend in a two wheeler from Tiruvannamalai to Vettavalam and at about 3.45 p.m., the offending vehicle, which is also a two wheeler belonging to the 1st respondent in which three persons were traveling was driven in a rash and negligent manner and it hit the two wheeler and as a result, the claimant fell down and he sustained fracture of shaft of femur along with fracture of proximal 1/3rd of right tibia and other multiple injuries. The claimant was admitted in the hospital and he underwent treatment as an in patient from 11.02.2017 to 27.02.2017 and he also under went an operation. The



Medical board had assessed the disability at 30%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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 offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the compensation and the total compensation was fixed at Rs.3,36,336/- under various heads as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability 30%	Rs.1,50,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Medical Expenses	Rs. 29,336/-
5.	Attender Charges	Rs. 10,000/-
6.	Loss of Income during the treatment period	Rs. 27,000/-
7.	Transportation expenses	Rs. 10,000/-
8.	Loss of Amenities	Rs. 50,000/-
	Total	Rs.3,36,336/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. Heard Mrs.A.Subadra, learned counsel for appellant/claimant and Mr.J.Michael Visuvasam, learned counsel for 2nd respondent.

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

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

8. The main ground that was urged by the learned counsel for



the appellant pertains to the compensation that was fixed under the head of permanent disability. The learned counsel submitted that the accident had taken place in the year 2017 and the Tribunal had adopted the per percentage method and fixed a sum of RS.5,000/- per percentage which was on the lower side. The learned counsel further submitted that the claimant in this case was a minor and therefore, the Tribunal ought to have followed the judgement of the Apex Court in ***Master Mallikarjun case*** reported in ***2014 14 SCC 396***.

9. This Court has consistently held that in a case where the claimant is minor, the compensation will have to be fixed under the head of disability in line with the judgement of the Apex Court. Wherever the disability has been assessed between 10% upto 30%, a sum of Rs.3,00,000/- must be fixed.

10. If per percentage method is adopted even then it has to be fixed at Rs.7,000/- per percentage in line with the judgement of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022, that works out to a sum of Rs.2,10,000/-. Therefore, there will only be a difference



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of Rs.90,000/-, if this Court resorts to follow the judgement of the Apex Court in *Master Mallikarjun case referred supra*.

11. The Tribunal has granted a sum of Rs.27,000/- under the head of loss of income during treatment period. The claimant in this case was aged about 15 years and therefore, there is no question of loss of income. Therefore, the compensation under the head of loss of income shall stand set-aside.

12. In the light of the above discussion, this Court is inclined to enhance the compensation under the head of disability from Rs.1,50,000/- to Rs.3,00,000/-. The compensation that has been fixed under the other heads are reasonable and it does not require the interference of this Court. Accordingly, the compensation fixed by the Tribunal is modified in the following manner :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability 30%	Rs.3,00,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Medical Expenses	Rs. 29,336/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
5.	Attender Charges	Rs. 10,000/-
6.	Transportation expenses	Rs. 10,000/-
7.	Loss of Amenities	Rs. 50,000/-
	Total	Rs.4,59,336/-

13. The compensation awarded by the Tribunal at Rs.3,36,336/- is enhanced to Rs.4,59,336/-. The Insurance company is directed to deposit the enhanced compensation, 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 weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,23,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 362 days as was ordered by this Court in C.M.P.No.25477 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.



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In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

24.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To,



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Motor Accident Claims Tribunal, Tiruvannamalai (in the Court of
Special Sub Court, Thiruvannamalai).

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