



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)No.539 of 2024
and
C.M.P(MD)No.6944 of 2024**

The Divisional Manager,
M/s.United India Insurance Company Limited,
By its Divisional Office,
7A West Veli Street,
Madurai,
Madurai District.

... Appellant/Second Respondent

.Vs.

1.Minor Durgadevi,
represented by her father and natural guardian
Sankar. Respondent/Claimant

2.MuruganRespondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order made in M.C.O.P.No.1830 of 2021, dated 4.9.2023, on the file of the Motor Accidents Claims Tribunal(Special Sub Court), Madurai.



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For Appellant : Mr.B.Rajesh Saravanan

For Respondent-1 : Mr.V.R.G.Mohan

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J**)

This Civil Miscellaneous Appeal is directed against the order made in M.C.O.P.No.1830 of 2021, dated 4.9.2023, on the file of the Motor Accidents Claims Tribunal(Special Sub Court), Madurai.

2.The appellant Insurance Company has filed this appeal mainly challenging the quantum of compensation awarded by the Tribunal and has not questioned the liability to pay the compensation.

3.The first respondent herein is the claimant and he was a minor, aged about 12 years at the time of accident and studying in 9th standard at the relevant point of time. On 15.03.2021, the claimant travelled in a bus from Thiruchuli and boarded at Pulikurichi and when he was walking on the road to take the cycle which was kept in Ganesan Thottam on south west direction and while crossing the road, at that time a Eicher vehicle bearing Registration No. TN 76 B 3429 which was driven by its driver in east west



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direction in a rash and negligent manner, dashed against the claimant and as a result of which, the claimant sustained fracture in right head and fracture all over the body and for that, he undergone treatment at the first instance at Thiruchuli Government Hospital and then at Rajaji Government Hospital at Madurai. A case in Crime No.41 of 2021 was registered for the said accident. The second respondent driver who drove the vehicle in a negligent manner is liable to pay compensation to the first respondent herein, which was insured with the appellant. Hence the claimant filed claim petition claiming compensation of Rs.15 lakhs.

4.The appellant herein/second respondent therein filed a counter affidavit denying the manner of the accident, injuries sustained by the claimant and also the age, education and prays for dismissal of the claim petition.

5.During enquiry on the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P14 were marked. On the side of the appellant, no evidence was examined and no exhibits were marked. Wound Certificates were marked as Ex.C1 and Ex.C2. On the basis of the oral and documentary evidence, the learned Tribunal awarded a sum of Rs.



42,53,400/- as compensation to the claimant interest at the rate of 7.5% p.a from the date of claim petition till the date of realization. .

6.On going through the evidence available on record, both oral and coumentry, the Tribunal has awarded under different heads as follows:

1.For Permanent Disability	- Rs.36,28,800/-
2.For pain and sufferings	- Rs. 2,00,000/-
3.For Extra nourishment	-Rs. 50,000/-
4.For attendant charges	-Rs. 19,600/-
5.For loss of convenience	-Rs. 50,000/-
6.For loss of marital life	-Rs.3,00,000/-
7.For transport expenses	-Rs. 5,000/-

total	-Rs.42,53,400/-

7.The learned counsel for the appellant submitted that he has filed this appeal mainly disputing the award of Rs.36,28,800/- awarded under the head "for permanent disability" and not the other heads. The learned counsel for the appellant submitted that the tribunal has taken the notional income of the injured at Rs.15,000/- which is on higher side and added 40% towards future prospects and applied multiplier of '18'. Further the Tribunal assessed the disability at 80% for the injuries sustained by the claimant, which is on higher side and the Tribunal ought to have taken the



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disability at 40% and prays for modification of the compensation awarded by the Tribunal.

8. In reply, the learned counsel for the first respondent-claimant submitted that the Tribunal, on appreciation of oral and documentary evidence, assessed the disability in a right manner and awarded the compensation as stated above, which seems to be just and reasonable and does not warrant any interference by this Court and prays for dismissal of the appeal.

9. A perusal of the award of the Tribunal shows that the Tribunal by taking the notional income of the injured at Rs.15,000/- and future prospects at 40% and by applying the multiplier of '18' for the age group of 14 seems to be just and reasonable. However, the Tribunal has taken the percentage of disability at 80%, which in the considered opinion of this Court is on the higher side. Hence, considering the materials placed before this Court as well as the evidence let on the side of the claimant, award under the head of permanent disability at Rs.36,28,800/- seems to be excessive and hence, the same is reduced to Rs.20 lakhs. Insofar as the other compensation under other heads i.e., Rs.2 lakhs for pain and sufferings, Rs.



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50,000/- for extra nourishment, Rs.19,600/- for attendant charges, for loss of amenities at Rs.50,000/-, Rs.3 lakhs for loss of marital life and Rs.5000/- for transport expenses seems to be just and reasonable and the award under the above heads are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For permanent disability	Rs. 36,28,800/-	Rs. 20,00,000/-	reduced
2	For pain and sufferings	Rs.2,00,000/-	Rs.2,00,000/-	same
3	For extra nourishment	Rs.50,000/-	Rs.50,000/-	same
4	For attendant charges	Rs.19,600/-	Rs.19,600/-	Same
5.	For loss of amenities	Rs.50,000/-	Rs.50,000/-	same
6	For loss of marriage prospects	Rs.3,00,000/-	Rs.3,00,000/-	Same
8	For transport Expenses	Rs.5,000/-	Rs.5,000/-	Same
9	Total	Rs. 42,53,400/-	Rs. 26,24,600/-	reduced

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.42,53,400/-



to Rs.26,24,600/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization. It is submitted by the learned counsel for the appellant/Insurance Company that the entire award amount as ordered by the Tribunal, is deposited to the credit of claim petition. Since the claimant is a minor, the Tribunal is directed to deposit the modified award amount so deposited, in an interest bearing fixed deposit, in any one of the nationalized Bank, initially for a period of three years, renewable thereafter, till the minor attains majority. The father and natural guardian, Sankar is permitted to withdraw interest from the above said deposit, once in three months, directly from the bank and utilize the same for the welfare of the minor daughter. The appellant Insurance Company is permitted to withdraw excess award amount from the Tribunal by filing necessary application No costs. Consequently, connected Miscellaneous Petition is closed.

(P.V.,J.) (K.K.R.K.,J.)
28.08.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn



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- To
- 1.The Motor Accidents Claims Tribunal,
(Special Sub-Court),
Madurai.
 - 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.
and
K.K.RAMAKRISHNAN,J.

vsn

JUDGMENT MADE IN
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