



C.M.A.(MD)No.954 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.954 of 2024

Minor.A.Sri Selvasarani ... Appellant
(Represented by her mother natural
guardian/next friend Velankanni,)
Vs.

1. Amutha
2. National Insurance Company Limited,
Through its Branch Manager,
Having Officer at No.92,
Devarpuram Road, Near Court Building,
Thoothukudi -3.
3. National Insurance Company Limited,
Through its Branch Manager,
Having Officer at No.37C, S.N. High Road,
Tirunelveli – 627 001. ... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 23.11.2023 made in M.C.O.P.No.435 of 2022 on the file of the Motor Accident Claims Tribunal cum Special Sub Court, Tirunelveli and enhance the compensation.

For Appellant : Mr.I.Robert Chandra Kumar
For Respondents : Mr.J.Jawahar for R1
Mr.D.Sivaraman for R2 and R3



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J U D G M E N T

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The instant Civil Miscellaneous Appeal has been filed, seeking enhancement of compensation.

2. The appellant filed a claim petition stating that while she was riding as a pillion rider along with her father, the lorry insured with the second respondent, came in a rash and negligent manner, dashed against the two-wheeler, as a result of which, her father sustained fatal injuries and she sustained multiple grievous injuries.

3. The owner of the lorry filed a counter stating that the accident took place only due to the negligence of the rider of the two-wheeler and that, in any case, the compensation claimed by the claimant was excessive.

4. The second and third respondents opposed the claim petition stating that the insured vehicle was not at fault and that, in any case, the compensation awarded by the Tribunal was excessive.

5. The claim petitions filed by the appellant and the legal heirs of the deceased were tried together. The award passed in respect of the



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deceased is not under challenge.

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6. The Tribunal, after taking into consideration the oral and documentary evidence, has passed an award of compensation of Rs.9,90,000/- to the claimants.

7. The learned Counsel for the appellant submitted that though the claimant had established that she had suffered 100% functional disability, the Tribunal had awarded a meagre sum under the head of Loss of Earning Capacity and other heads and that the compensation under the head of Future Medical Expenses was not awarded.

8. The learned Counsel for the second and third respondents, per contra, submitted that the award of compensation is just and reasonable and hence, no interference is called for.

9. The learned Counsel for the first respondent adopted submissions made by the learned for the second respondent.

10. The only point for consideration in the instant appeal is as follows:



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*whether the compensation award of the Tribunal is
just and reasonable?*

11. Admittedly, the claimant had suffered amputation of the left leg and had suffered multiple injuries all over her body. The claimant was aged four years at the time of accident. The Medical Board had assessed the permanent disability as 85%, which is not likely to improve.

12. Considering the nature of injuries stated in Ex.P.16, the wound certificate and Ex.C.1, the disability certificate, this Court is of the view that the claimant had suffered 100% functional disability. Therefore, the Tribunal was right in fixing the functional disability as 100%. The Tribunal has taken into consideration, a sum of Rs.45,000/- as notional income, based on the judgment of this Court.

13. This Court is of the view that considering the fact that the accident took place in the year 2021 and the suffering of the injured is likely to be more, the annual income in the facts and circumstances can be fixed as Rs.75,000/- (Rupees Seventy Five Thousand only). The Multiplier applicable is '15'. Hence, the compensation under the head of Loss of Earning Capacity can be enhanced to Rs.11,25,000/- (Rupees



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Eleven Lakhs Twenty Five Thousand only). The disability certificate,

Ex.C.1 and the other evidence on record including the wound certificate,

suggest that the claimant had suffered the following injuries.

*“left leg Ankle amputation, left tibia maximal
1/3, popliteal artery injury, PA primary repair and
multiple injuries all over the body.”*

14. Considering the age of the claimant, who was four years at the time of accident, it would be just and reasonable to enhance the compensation under the head of Loss of Convenience to Rs.2,00,000/- (Rupees Two Lakhs only) and Pain and Suffering to Rs.2,00,000/- (Rupees Two Lakhs only). The fact the injury is likely to affect the claimant's marriage prospects cannot be denied. Hence, the compensation towards the Loss of Marriage Prospects can be enhanced to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only). The claimant would also require an attendant for the substantial part of her life. Hence, this Court is of the view that the Attendant Charges can be enhanced to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only).

15. The Tribunal has not awarded any compensation under the head of Future Medical Expenses, which the claimant is likely to incur towards



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fixing of prosthetic leg. This Court is of the view that the claimant would be entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) for the said purpose under the head of Future Medical Expenses. Thus, the award of compensation is enhanced as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Earning Capacity	Rs.6,75,000/-	Rs.11,25,000/- (Rs.75,000x15 =11,25,000/-)	Enhanced
2	Loss of Convenience	Rs.1,00,000/-	Rs.2,00,000/-	Enhanced
3	Pain and Suffering	Rs.1,00,000/-	Rs.2,00,000/-	Enhanced
4	Loss of Marriage Prospects	Rs.50,000/-	Rs.1,50,000/-	Enhanced
4	Transport Expenses	Rs.5000/-	Rs.5,000/-	Confirmed
5	Attendant Charges	Rs.50,000/-	Rs.1,50,000/-	Enhanced
6	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
7	Future Medical Expenses	-	Rs.3,00,000/-	Granted
Total		Rs.9,90,000/-	Rs.21,40,000/-	Enhanced by Rs.11,50,000/-

16. The second respondent/Insurance Company is directed to deposit a sum of **Rs.21,40,000/-** (Rupees Twenty One Lakhs and Forty Thousand only) with the interest @ 7.5% p.a from the date of the claim petition till the date of realization (excluding the period of dismissal for



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default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

17. On such deposit, the guardian/mother of the appellant/minor is permitted to withdraw 25% of the said amount towards the medical expenses already incurred by her and the remaining amount shall be deposited in any one of the Nationalized Bank in an interest bearing Fixed Deposit. The guardian/mother of the appellant/minor, is also permitted to withdraw interest from the said deposit, directly from the Bank, till the appellant/minor attains majority and utilise the same for the welfare of the appellant/minor. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced amount.

18. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
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SUNDER MOHAN, J.

jbr

To:

The Motor Accident Claims Tribunal Cum Special District Judge,
Thiruchirappalli.

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