



C.M.A.(MD) No.1113 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1113 of 2017

Murugeswari

... Appellant

Vs.

1.V.Pandi
2.Branch Manager
Cholamandalam MS General Insurance Ltd,
No.374, Dindigul Main Road,
Kalavasal Near ENT Hospital,
Madurai.

... Respondents

*(Minor/appellant is declared as major and guardianship
of her father is discharged vide order dated 20.10.2021
in C.M.P.(MD)No.8445 of 2021)*

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2014 passed in M.C.O.P.No.1523 of 2012 on the file of the Motor Accidents Claims Tribunal/ CJM, Madurai.

For Appellant : Mr.A.Liaket Ali

For Respondents :
for R1 : No appearance
for R2 : Mr.S.Srinivasa Raghavan



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JUDGMENT

The instant appeal has been filed seeking enhancement of the compensation.

2. Since the findings on negligence and the manner of the accident are not under challenge, the facts leading to the filing of the claim petition are unnecessary for the disposal of the present appeal.

3. The learned counsel for the appellant/claimant submitted that the appellant had suffered 50% disability, and considering the nature of the injuries, the Tribunal ought to have computed the compensation under the head disability by adopting the multiplier method and that the compensation awarded under the other heads is meagre.

4. The learned counsel for the second respondent/Insurance Company, per contra, submitted that the Doctor, who had examined the appellant, had assessed the disability as a partial permanent disability at 50%; that there is no evidence to show that the appellant has suffered any



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functional disability; and that in such circumstances, the award of compensation by the Tribunal is just and reasonable.

5. The only point for consideration in the instant appeal is '*whether the compensation awarded by the Tribunal is just and reasonable?*'

6. The claimant was not examined before the Tribunal as she was a minor. The father of the claimant examined himself as P.W.3. Even in his deposition, there is nothing to suggest that the claimant had suffered any functional disability except for stating that she is unable to carry on the normal activities. The Disability Certificate issued by the Doctor suggests that the claimant had suffered partial permanent disability at 50%. When the case was referred to lok adalat, the Doctor had examined the claimant and though he had issued a certificate stating that there was a functional disability, this Court is of the view that the functional disability has to be assessed by the Court based on the nature of the job, the nature of the injuries and the disability assessed by the Doctor. In the absence of any other evidence, this Court is of the view that it cannot be inferred that the appellant had suffered functional disability. However, the compensation awarded by the Tribunal can be enhanced in the following manner:



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(i) This Court is of the view that considering the nature of the disability and injuries, Rs.4,000/- can be awarded for a percentage of disability and hence, the compensation under the head 'Disability' can be enhanced to Rs.2,00,000/-.

(ii) The award under the head 'Pain and sufferings' can be enhanced to Rs.50,000/-, since the photographs and the other medical documents suggest that the compensation of Rs.10,000/- under the said head is meagre.

(iii) Further, considering the facts and circumstances of the case, future medical expenses and charges towards physiotherapy cannot be ruled out. However, no assessment was made by the Tribunal in this regard. For that purpose, this Court is of the view that the compensation under the head 'Future medical expenses and physiotherapy charges' can be enhanced to Rs.50,000/-.

(iv) No compensation has been awarded under the head 'loss of amenities'. Hence, Rs.25,000/- can be awarded under the said head.



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(v) The claimant had suffered injuries when she was 13 years old.

The disability and the nature of the injuries suffered by the claimant suggest that the claimant would be entitled to the compensation under the head 'loss of marriage prospects'. Hence, this Court is of the view that the compensation can be awarded at Rs.1,50,000/- under the said head, in the facts and circumstances of the case. Thus, the compensation awarded by the Tribunal 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	Partial permanent disability	Rs.1,00,000/-	Rs. 2,00,000/-	Enhanced
2	Pain and sufferings	Rs. 10,000/-	Rs. 50,000/-	Enhanced
3	Extra nourishment	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4	Medical expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
5	Future medical expenses (physiotherapy charges)	Rs. 15,000/-	Rs. 50,000/-	Enhanced
6	Transport expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
7	Loss of amenities	---	Rs. 25,000/-	Granted
8	Loss of marriage prospects	---	Rs.1,50,000/-	Granted
Total		Rs.1,40,000/-	Rs.4,90,000/-	Enhanced by Rs.3,50,000/-

7. The second respondent/Insurance Company is directed to deposit



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the enhanced compensation amount of Rs.4,90,000/- (Rupees Four Lakhs Ninety Thousand only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for 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.

8. The claimant/appellant is permitted to withdraw the compensation, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the necessary Court Fee, if any, on the enhanced amount.

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

No costs.

13.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:

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- 1.The Motor Accidents Claims Tribunal/ Chief Judicial Magistrate,
Madurai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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