



CMA.No.2097 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.02.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.2097 of 2021
and CMP.No.11548 of 2021

M/s.National Insurance Company Limited,
Rep. by its Manager,
Bye-pass Road,
Dharmapuri.

... Appellant

Vs.

1.Minor Keerthika
(Rep. by her next friend and father Govindan,
son of Perumal)
2.Sivaperumal

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment and decree dated 13.09.2019, passed in MCOP.No.789 of 2015, by the Motor Accident Claims Tribunal (In the Court of Special District Judge), Dharmapuri.

For Appellant : Mr.J.Michael Visuwasam

For Respondents : M/s.S.P.Yuvaraj for R1
No appearance for R2

JUDGMENT



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Questioning the quantum of compensation awarded by the

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Motor Accident Claims Tribunal Court of Special District Judge),
Dharmapuri in MCOP.No.789 of 2015, dated 13.09.2019, the
appellant/Insurance Company has come by way of this Civil Miscellaneous
Appeal.

2. It is not in dispute that the injured minor Keerthika who is a
10th standard school going child aged about 14 years suffered a fracture of
left humerus bone and multiple injuries all over the body in a road accident
that had occurred on 14.07.2015. The claimant filed a petition seeking
compensation of Rs.10,00,000/-. The tribunal granted the compensation of
Rs.5,54,500/-. Aggrieved by the quantum of compensation fixed by the
Tribunal the insurer of offending vehicle has filed this appeal.

3. Both the learned counsel appearing for the appellant as well
as learned counsel appearing for respondents have not advanced any
arguments on the questions of negligence and liability. Therefore, facts
necessary for deciding those questions are not discussed in this judgment.

4. Heard the learned counsel for appellant/Insurance Company



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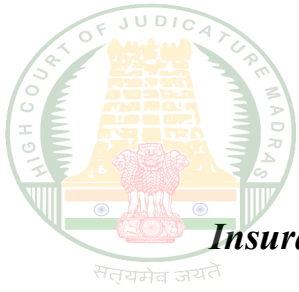
and the learned counsel for the first respondent. Perused the papers.

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5. The learned counsel appearing for the appellant/insurance company would submit that having awarded a sum of Rs.10,00,000/- under the head disability by following the *Master Mallikarjun Vs. Divisional Manager, National Insurance Company Limited*, reported in *2013 (2) TNMAC 338*, decided by the Apex Court, the Tribunal committed a serious error in awarding a sum of Rs.1,00,000/- towards pain and suffering and Rs.25,000/- towards mental agony to the parents.

6. The learned counsel appearing for the first respondent/claimant would submit that having regard to the tender age of the victim, the Tribunal granted a sum of Rs.1,00,000/- towards pain and suffering and the same need not be interfered with. The learned counsel further submitted that due to the hospitalization and injury of the minor, parents of the injured suffered a loss and the tribunal was justified in awarding of Rs.25,000/- towards mental agony to the parents.

7. In *Master Mallikarjun Vs. Divisional Manager, National*



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Insurance Company Limited and another cited supra, the Apex Court, while considering the question of granting disability suffered by the minor observed as follows:

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure towards treatment, attendant, etc., should be, if the disability is above 10 percent and upto 30 percent to the whole body, Rs.3,00,000; upto 60 percent, Rs.4,00,000/- upto 90 percent, Rs.5,00,000/- and above 90 percent, it should be Rs.6,00,000/-. For permanent disability upto 10 percent, it should be Rs.1,00,000/-, unless there are exceptional circumstances to take a different yardstick.”

8. In the case on hand, as per the disability certificate of Ex.X1 issued by Medical Board, the disability of minor was assessed at 20%, therefore, as per law laid down in **Master Mallikarjun case**, the Tribunal was justified in granting Rs.3,00,000/- under the head compensation for disability.



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9. The learned counsel appearing for the appellant vehemently contended that the fracture suffered by the minor was fused and the internal plate fixation was also removed and therefore, there is no possibility of injured suffering with any kind of inconvenience or disability. However, the Medical Board issued a certificate Ex.X1, assessing the disability of the minor at 20%. If the insurance company has got any quarrel over the disability assessed by the Medical Board, it should have taken steps before the Tribunal for seeking reassessment of the disability percentage. For the reason best known to it, the appellant has not taken steps seeking reassessment of the disability. Therefore, the submission made by the learned counsel for the appellant at this stage cannot be accepted, therefore, the amount of Rs.3,00,000/- awarded by the Tribunal, taking into consideration percentage of the disability at 20% is confirmed.

10. It is also submitted by the learned counsel for the appellant that the amount awarded under head disability by following the *Master Mallikarjun* case also includes compensation for pain and suffering and mental agony. Therefore, the Tribunal ought not have separately awarded



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Rs.1,00,000/- towards pain and suffering and Rs.25,000/- towards mental agony to parents, which are untenable.

11. As rightly contended by the learned counsel appearing for the appellant that the amount of Rs.3,00,000/- for 20% percentage of disability as indicated by the Apex Court in *Mallikarjun case*, includes the compensation under the head of pain and suffering and mental agony. Hence, the Tribunal ought not have awarded Rs.1,00,000/- and Rs.25,000/- under the separate heads pain and suffering and mental agony. Hence, the same is set aside.

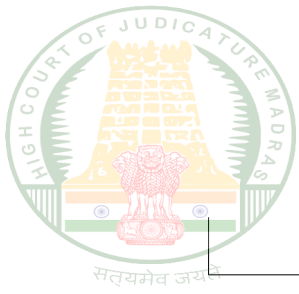
12. In the case on hand, the victim child was hospitalized twice for treatment of fracture in the left humerus bone and she had taken treatment in hospital as inpatient from 14.07.2015 to 19.07.2015. Thereafter, she was admitted in the same hospital for implant removal and she was admitted again on 18.04.2016 and discharged on 21.04.2016. Taking into consideration the inconvenience and discomfort to the parents due to the hospitalization and the loss of earning during medical treatment period, this Court deems it appropriate to award Rs.75,000/- under the head of



discomfort, inconvenience and loss of earning to the parents during the period of hospitalization. Therefore, the amount of Rs.1,00,000/- awarded under the head pain and suffering and Rs.25,000/- under the head of mental agony to the parents are set aside. The amount awarded by the Tribunal under the various other heads are confirmed. In all, the compensation of Rs.5,50,500/- awarded by the Tribunal is reduced to Rs.5,04,500/-.

13. In the light of the above discussion, this Court modifies the compensation in the following manner:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Compensation for disability	3,00,000/-	3,00,000/-
2.	Pain and suffering	1,00,000/-	set aside
3.	Agony to parents	25,000/-	set aside
4.	Medical Expenses	82,000/-	82,000/-
5.	Attender Charges	5,000/-	5,000/-
6.	Extra Nourishment	20,000/-	20,000/-
7.	Transport Charges	22,500/-	22,500/-
8.	For discomfort and inconvenience to parents during treatment period	-	75,000/-



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	Total	5,54,500/-	5,04,500/-
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14. In view of the discussion made earlier, the compensation amount of Rs.5,54,500/- awarded by the Tribunal is reduced to sum of Rs.5,04,500/-. The 1st respondent is entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The appellant/Insurance company is directed to deposit a balance sum along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is entitled to withdraw the said amount along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No



costs.

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Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal
Special District Judge, Dharmapuri.

2.The Section Officer
VR Section,
High Court, Madras.

S.SOUNTHAR, J.

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