



C.M.A.No.650 of 2023

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C.M.A.No. 650 of 2023

T.V.THAMILSELVI, J.

This matter was taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the appellant.

2. The learned counsel for appellant would submit that this Court by Judgment dated 11.06.2025 partly allowed the above Civil Miscellaneous Appeal. However, he would submit that para 8 of the judgment needs to be modified. Hence, he prayed to amend the same and requested to issue fresh order copy. Accordingly, the matter has been listed today.

3. Heard the contentions of learned counsel for appellant and perused the order.

4. Considering his submissions, Registry is directed to substitute para 8 of the judgment as follows :-

“8. In view of discussions made earlier, the compensation awarded by the tribunal is reduced to Rs.2,30,000/-. As the 1st respondent/claimant is a minor, the appellant is directed to deposit the amount in any nationalised bank bearing fixed deposit scheme



C.M.A.No.650 of 2023

WEB COPY

together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of MCOP.No.1291 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub-Judge), Tiruvannamalai within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, until the minor attains majority, the interest thereon shall be withdrawn by minor 1st respondent's next friend and guardian, his father Mr.Harikrishnan, once in three months and the 1st respondent is permitted to withdraw the award amount by making formal application on attaining majority before the tribunal. If the amount was excessively deposited, the appellant is entitled to withdraw the same.”

5. Registry is directed to incorporate above correction in the judgment of this Court in C.M.A.No.650 of 2023 dated 02.07.2025 and issue fresh order copy to the appellant.

04.08.2025

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C.M.A.No.650 of 2023

T.V.THAMILSELVI, J.

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C.M.A. No.650 of 2023

04.08.2025



C.M.A.No.650 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 650 of 2023

AND

CMP NO. 5469 OF 2023

1. The Divisional Manager
The Oriental Insurance Company
Ltd, Hub TP Claims, Vijayalakshmi
Complex, 1st Floor, No.32/13, Phase
No.2, Sathuvacheri, Vellore 632
009.

Appellant(s)

Vs

1. Minor.Kesavan
S/o.Harikrishnan(minor rep by his
father next friend Harikrishnan aged
35 years, S/o.Dhanasekar)
Kizhvanniyanur Village, Poondi
Post, Kizhvanniyanur Village,
Poondi Post, Kalasapakkam Tk,
Tiruvannamalai Dist.

2.Kaviyarasan
S/o.Kamaraj, No.97, Chinnakolapadi
Colony, 1st Street, Chengam Tk,
Tiruvannamalai Dist.

Respondent(s)

CMA No. 650 of 2023



C.M.A.No.650 of 2023

PRAYER

To against the award and decree dated 25.11.2022 made in MCOP.No. 1291 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai.

CMA No. 650 of 2023

For Appellant(s): D.Bhaskaran

For Respondent(s): M/s.V. Thiyagarajan For R2
Ms.N.Lavanya For
Mrs.M.Malar For R1

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the award and decree dated 25.11.2022 made in MCOP.No. 1291 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai.

2. The brief facts of the case:

On 11.05.2017 at about 3.00 A.M., the claimant and his mother were travelling in the Auto bearing registration No.TN 25 Q 2074 as passengers from Arts College towards Tiruvannamalai Central bus stop after un-boarding from Bangalore bus on Chengam to Tiruvannamalai



C.M.A.No.650 of 2023

WEB COPY

road and while the auto proceeding near one Community hall at Thamarai nagar on Chengam road, at that time the driver of the auto driven the auto in a rash and negligent manner and dashed against another auto from face to face which was coming in the opposite direction and caused the accident. Due to this accident, the minor claimant was sustained multiple injuries all over the body. Thereafter, the claimant filed the petition before the tribunal claiming compensation. The appellant herein contested the case by filing counter. After considering the oral and documentary evidence, the tribunal awarded a sum of Rs.4,40,000/- as compensation. Challenging the award passed by the tribunal appellant filed this appeal.

3. The appellant filed this appeal on the following grounds:

1. of the Claimant himself and hence it is an admissible document. The Claims Tribunal failed to note that once documents relied on the side of the Claimant himself, it as an admissible document and he cannot be permitted to turn around for other aspects, in view of the judgment of Apex Court reported in 2007 AIR SCW 3591.

2. The Claims Tribunal having observed that as per Ex.P1-FIR registered as against the driver of an unregistered auto based on the complaint given by the mother of the claimant, erred in held that the driver of first respondent auto was responsible accident.



C.M.A.No.650 of 2023

WEB COPY

3. The Claims Tribunal having noted the investigation authority after investigation find fault of unregistered auto and the police charge sheeted the driver of unregistered auto and final report also against the driver of an unregistered auto erred in held that the driver of insured's auto was responsible.

4. The Claims Tribunal failed to note that the mother of the claimant who accompanied the claimant at the time of accident not chosen to come into witness box.

5. The Claims Tribunal ought to have easily presume that the claimant with motive to get an untenable compensation not chosen to implead unregistered auto in the proceedings knowing fully well that unregistered auto was responsible for the accident.

6. Considering facts and circumstances the Tribunal ought to have sue moto directed the claimant to implead the owner of unregistered auto for proper adjudication in the proceedings.

7. The Claims Tribunal failed to note that the Claimant not chosen to give complaint against the driver of insured's auto.

8. The Claims Tribunal failed to note that no piece of material available before the Tribunal that the driver of insured's vehicle was responsible.

9. The Claims Tribunal also failed to note that the claimant not summoned and examined the investigation officer to prove negligence.

10. Consider the fact that FIR by the mother of the claimant and mother of the claimant not come into witness box and investigation authority find fault of the driver of unregistered auto, the Tribunal ought to have easily presume that the evidence of PW2 is false with motive.

4. By submitting the above grounds, the learned counsel for the appellant submits that accident was happened due to negligence of the opposite vehicle but the mother of the minor was not given any complaint

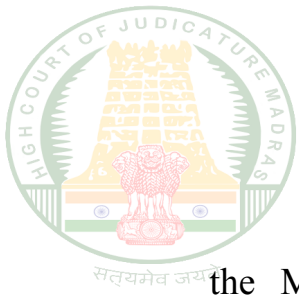


C.M.A.No.650 of 2023

WEB COPY

against the opposite vehicle. However, the investigating authority after investigation find fault on unregistered auto to that effect charge sheet has been filed. Therefore, the accident was not proved by the claimant without which tribunal awarded compensation. Hence he prayed to set aside the award passed by the tribunal.

5. The submission of the learned counsel for the respondent is that at the time of the accident due to negligence of the auto driver/second respondent minor Kesavan sustained injury. Besides, the claimant has produced the material evidence to prove the manner of the accident as well as liability. Considering the above, the tribunal rightly awarded compensation which needs no interference. Further, the learned counsel for the appellant submits that apart from the liability, the tribunal has fixed 20% disability as such is totally erroneous. Since, the minor sustained fracture on right limb, it is partial disability not to the whole body. Therefore, the award passed by the fixing 20% disability by adopting Master Mallikarjun case as such is totally erroneous. Admittedly, the minor was sustained injury, as per Ex.C1, he sustained post traumatic sequelae right upper limb. So, in certificate it is mentioned as 20% disability but it was not certified as permanent disability hence



C.M.A.No.650 of 2023

WEB COPY

the Master Mallikarjun case would not apply to the facts of the present case as rightly pointed by the appellant's counsel.

6. It is no doubt that at the time of the accident minor was travelling in the auto belongs to the second respondent and accident happened due to the rash and negligent driving of the auto driver/second respondent. Though the appellant disputing the manner of the accident, there is no contra evidence was produced before the tribunal. Therefore, tribunal has rightly fixed liability on the appellant, since the vehicle was insured with appellant which needs no interference. In respect of fixing amount under the head of disability by the award passed by the tribunal, this Court is inclined to fix Rs.7,000/- per percentage of disability 20%. Accordingly, the petitioner is entitled to Rs.1,40,000/- under the head of disability. The award passed under the head of loss of amenities is unwarranted. Accordingly, loss of amenities is ordered to be deleted. Accordingly, appeal is partly allowed. Except above modification, the order passed by the tribunal remain unchanged.

7. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-



C.M.A.No.650 of 2023

WEB COPY

<i>S.No.</i>	<i>Head</i>	<i>Compensation awarded by the Tribunal</i>	<i>Compensation awarded by this Court</i>
1.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
2.	Loss of Income	Nil	Nil
3.	Medical Expenses	Nil	Nil
4.	Transportation expenses	Rs.10,000/-	Rs.10,000/-
5.	Extra Nourishment	Rs.15,000/-	Rs.15,000/-
6.	Attender charges	Rs.15,000/-	Rs.15,000/-
7.	Damages to cloths and article	Nil	Nil
8.	Lost of amenities	Rs.50,000/-	Nil
9.	For permanent disability	Rs.3,00,000/-	Rs.1,40,000/-
10	Total	Rs.4,40,000/-	Rs.2,30,000/-

8. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to **Rs. 2,30,000/-**. The appellant is directed to deposit the said amount together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of MCOP No. 1291 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Tiruvannamalai, within a period eight weeks from the date of receipt of a copy of this judgement. On such deposit, the appellant/claimant is permitted to withdraw the award amount by making formal application before the Tribunal. If



C.M.A.No.650 of 2023

WEB COPY

amount was excessively deposited, the appellant is entitled to withdraw the same.

9. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

11-06-2025

pbl

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No