



CMA.No.2855 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2855 of 2022

Minor Kavya
(Minor represented by her mother
and natural guardian Kalaiselvi) ... Appellants

Vs.

1.Millinnium Cargo Carriers
represented by Proprietor Murugan,
Adjacent to Gold Hills Square,
14th Main, Hosur Road,
Bommanahalli, Bangalore 560068,
Karnataka.

2.The Divisional Manager
The New India Assurance Co., Ltd,
Hosur DO 721800 at 1-A
Hotel Ananth Bhavan Building ,
1st Floor, Bye-pass Road, Hosur 635109,
Krishnagiri District ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow the above Civil Miscellaneous Appeal and enhance the award in Judgment and Decree dated 18.04.2022 made in MCOP No.32/2020 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, Krishnagiri District



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For Appellant : Mr.C.Prabakaran
For Respondent : M/s.R.Rathna Thara for R2
R1- Not returned in notice

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the injured claimant has come before this Court by way of this appeal.

2. It is the case of the claimant that she suffered injury in a road accident that had occurred on 24.05.2019. It is stated in the claim petition that she traveled in a two wheeler as a pillion rider along with one Bharath in Krishnagiri to Bangalore National Highway road. An eicher lorry, belonged to the 1st respondent insured with the 2nd respondent, was driven by its driver in a rash and negligent manner and dashed against the claimant. Therefore, the claimant suffered fracture in her hip. The claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The claim petition was opposed by the respondent by filing counter denying the manner of accident as claimed in the claim petition. It was the case of the respondents that accident had occurred



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only due to the rash and negligent driving of the driver of the two wheeler.

4. The Tribunal, based on the evidence available on record, came to the conclusion that accident had occurred primarily due to the rash and negligent driving of the lorry by its driver. However, the Tribunal found that the driver of the two wheeler in which the victim travelled failed to produce the driving license and therefore, he also contributed to the accident. Hence, the Tribunal proceeded to hold that in case of composite negligence, the claimant can maintain an application against one of the tortfeasor and hence, directed the 2nd respondent, insurer of the lorry, to pay the entire compensation amount. The findings rendered by the tribunal that there was composite negligence on the part of the driver of the two wheeler because of his failure to produce the valid driving license is not correct in the light of the law laid down by Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 43*** especially when there is no positive evidence to show, the driver of the two wheeler also contributed to accident. Mere failure to produce valid driving license



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perse is not a ground to fix contributory negligence on him.

5. Based on the evidence of P.W.1 and the contents of FIR, the Tribunal, came to the conclusion that driver of the lorry is primarily responsible for the accident. Therefore, this Court holds that accident had occurred only due to the negligence on the part of the driver of the lorry.

6. The Medical Board which examined the victim issued Ex.P14, Disability Certificate fixing the disability at 60%. The Tribunal, by applying the law laid down by the Hon'ble Apex Court in ***Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another reported in 2013(2) TN MAC 338 (SC)***, awarded a sum of Rs.4,00,000/- under the head disability, pain and suffering, Extra nourishment, loss of amenities, Attendant charges etc., The said amount fixed by the Tribunal is as per the law laid down by the Hon'ble Apex Court in ***Mallikarjun*** case cited supra. Therefore, the same is confirmed. The amount of Rs.29,016/- awarded under the head medical expenses is based on Ex.P4, Medical Bills and the same is also confirmed.



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7. It is seen from the records that claimant was hospitalized three times i.e., on 24.05.2019 to 27.05.2019, 13.06.2019 to 07.07.2019 and 07.08.2019 to 02.09.2019. Therefore, it is clear that she has been in hospital for 54 days over a period of 3 ½ months. The parents of minor child would have taken care of him during hospitalisation and also during his stay in house for some time. Therefore, it is clear that parents of the minor victim would have been kept away out of their avocation for nearly four months. The accident had occurred in the year 2019. Therefore, the notional income for the parents can be easily fixed at Rs.16,500/- per month. They are entitled to loss of income for atleast four months. Hence, the amount of Rs.20,000/- awarded by the Tribunal under the head loss of income for the parents is increased to Rs.66,000/- In other aspects, the award passed by the Tribunal is confirmed. Therefore, the claimant is entitled to Rs.4,95,016/-

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



Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering, future medical expenditure, loss of amenities, extra nourishment, Transportation Expenses, attender charges.	4,00,000/-	4,00,000/-	Confirmed
2.	Medical expenses	29,016/-	29,016/-	Confirmed
3.	Loss of income of the parents	20,000/-	66,000/-	Enhanced
	Total	4,49,016/-	4,95,016/-	Enhanced by Rs.46,000/-

9. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,49,016/- is hereby enhanced to Rs.4,95,016/-. The appellant/claimant 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 2nd respondent /Insurance



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Company is directed to deposit the enhanced award amount, to the credit of MCOP No.32/2020 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, Krishnagiri District, along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimant is permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal subject to satisfying the Tribunal about attainment of majority by minor claimant. No costs.

20.03.2025

Index:Yes/No

Internet:Yes/No

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To

1. Motor Accident Claims Tribunal,
Additional District Judge, Hosur, Krishnagiri District
2. The Section Officer,
VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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