

C.M.A.(MD)No.634 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 21.02.2025**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**C.M.A.(MD)No.634 of 2019**

Minor R.Nithiyarathna,  
D/o. Rathinakani,  
Door No.1/185, Palaniappa Nagar,  
Meenakshiamman Nagar Extension,  
K.Pudur,  
Madurai – 625 007.  
(Minor is represented through her  
mother and Guardian Latha)

... Appellant

Vs.

1. V.Ganesh
  2. United India Insurance Company Ltd.,  
Through its Divisional Manager,  
73, Santa Maria Complex, 1<sup>st</sup> Floor,  
Bypass Road,  
Madurai – 625 016.
  3. The Managing Director,  
Tamil Nadu State Transport Corporation Ltd.,  
Railway Station New Road,  
Kumbakonam.
- (1<sup>st</sup> respondent was exparte before Tribunal and  
3<sup>rd</sup> respondent is not liable to pay compensation  
Hence notice to 1<sup>st</sup> and 3<sup>rd</sup> respondents be dispensed)

... Respondents



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**PRAYER:** Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicle Act, to set aside the order dated 10.09.2015 in M.C.O.P.No.1228 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Judge, Madurai.

For Appellants : Mr.PT.S.Narendravasan  
For R-1 : No appearance  
For R-2 : A.Ilango  
Standing Counsel  
For R-3 : Mr.P.M.Vishnuvarthanan

### JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order dated 10.09.2015 in M.C.O.P.No.1228 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Judge, Madurai.

2. The brief facts in a nutshell are as follows:

The appellant is a minor girl, who is represented by her guardian mother, namely Latha. While the minor child, namely, Nithiyarathna along with Balamurugan, Subramanian and Saroja were travelling as passengers on 26.07.2015 in the Mahendra stylo vehicle bearing Registration No.TN-59-AW-2751 belonging to the first respondent from Velankanni to



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Madurai, while the vehicle was nearing Thanjavur at about 17:20 hours, the driver of the van drove the vehicle in a rash and negligent manner from the east to west direction and dashed against the left side of one Tamil Nadu State Transport Corporation bus bearing Registration No.TN 49 N 1829, which was proceeding from south to north direction along Thanjavur Mariamman Kovil bypass road near Kanni Thoppu Pirivu Salai. In the said accident, the front portion of the vehicle of the first respondent was damaged and the appellant as well as the others were also injured. The minor appellant, sustained grievous injuries on head, left cheek, and also sustained scalp injuries with multiple injuries in other parts of her body. The appellant along with the other injured with the assistance of the public was admitted at Meenakshi Hospital, Thanjavur, for treatment. In this regard, the Inspector of Police, Ammapatti Police Station, Thanjavur District, had registered a First Information Report in Crime No.349 of 2015 under Sections 279 and 333 of IPC. The appellant was treated as inpatient at Meenakshi Hospital from 26.07.2015 to 24.08.2015 for the injuries sustained in the accident and had undergone multiple surgeries for Bi-frontal depressed fracture and for lacerations on left cheek and front scalp in the aforesaid hospital. She also had to continue her treatment for several years after discharge. Despite treatments, the appellant has not fully

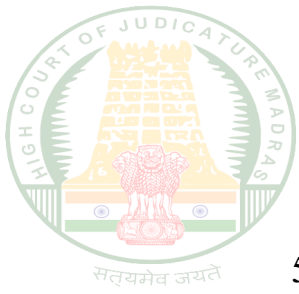


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recovered from her ailments and she is suffering from loss of memory, headache, lack of concentration, giddiness, facial disfiguration and many other related physical ailments. At the time of accident, the appellant was 10 years old and was a healthy student, who pursued VI Standard in a Matriculation School at Madurai. The accident had occurred due to the rash and negligent driving of the first respondent driver cum owner and the said vehicle had been insured with the second respondent / Insurance Company.

3. The Tribunal examined six witnesses on the side of the appellant / petitioner and marked Ex.P.1 to Ex.P.40 on the side of the appellant / petitioner. One witness was examined on the side of the respondent and no documents were marked.

4. On the basis of the arguments made by either parties, the materials available on record and the evidence on hand, the Tribunal passed an award by fixing a compensation of Rs.13,06,000/-. Challenging the same, seeking enhancement of compensation, the present appeal has been preferred.



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5. The learned Counsel appearing for the appellant / petitioner submitted that the Tribunal without considering the nature of the injury sustained by the child and also the nature of the disability suffered by the appellant, has fixed the notional income as Rs.8000/- and future prospectus was also not taken into account while calculating the loss of income due to the disability. He also categorically submitted that the appellant had suffered severe pain, agony and trauma because of the kind of multiple surgeries undergone by her and no compensation has been awarded by the Tribunal under the head pain, agony and trauma and the loss of amenities was also not taken into consideration and pressed for enhancement of compensation. Relying upon the judgment of the Honourable Division Bench of this Court in the case of Oriental Insurance Company Limited Vs. Minor Soundarya reported in 2019 (1) TNMAC 197, the learned Counsel categorically submitted that the aforesaid case was a similar case in which the injured claimant was a minor girl of eight years, who suffered 85% disability, for whom the notional income was fixed at Rs.10,000/- per month, adding 40% towards future prospectus and the same can be adopted in this case as well.

6. Per contra the learned Counsel appearing for the second



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respondent relying upon the judgment of the Honourable Apex Court in the case of V.Mekala vs. M.Malathi and another reported in 2014 (2) TNMAC 6 (SC), submitted that the multiplier adopted in the case relied upon by the learned counsel for the appellant / petitioner was 18 and that cannot be done in this case because in terms of the mandates of *Sarala Varma* case, the multiplier of the injured who is less than 15 years should be fixed as 15. So this case is a fit case wherein the multiplier should have been fixed at 15. However, the Tribunal had fixed a multiplier at 18 and the same should be modified. He further insisted that the notional income which is fixed by the Tribunal is fair and reasonable and the same need not be interfered with.

7. Heard the learned Counsel appearing for the appellant, the learned Counsel appearing for the respondents 2 and 3 and carefully perused the materials available on record.

8. No doubt the injured is a minor, who is of age 10 years at the time of accident. The percentage of disability arrived at by the Tribunal is fixed 50% which is also not disputed by the learned Counsel for the second respondent. Considering the fact that the injured is a girl child and the



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nature of injuries sustained by her, this Court is of the considered view that the Tribunal ought to have fixed the notional income of the injured at Rs.10,000/- per month and I am also of the considered view that for future prospectus, an additional 40% could be fixed towards the income. Since the disability is 50%, obviously there will be a loss in the earning capacity of the minor appellant in the future. Therefore, taking Rs.14,000/- as notional income per month and applying multiplier 15 as per the age of the injured, namely 10 years. The loss of income due to disability is derived as here under:

Loss of income due to disability = Rs.14,000/- x 12 x 15 x 50/100 =  
Rs.12,60,000/-

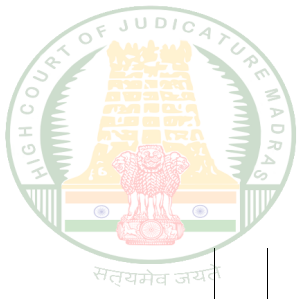
9. The Tribunal had awarded a compensation of Rs.40,000/- under the head pain, agony and trauma and the same can be modified and enhanced to Rs.2,00,000/-. For nourishment an amount of Rs.10,000/- has been awarded by the Tribunal. Considering the fact that the injured is a girl child that is enhanced to Rs.50,000/-. The attendant charges during treatment is Rs.15,000 and the same need not be modified. For loss of dress and amenities an amount of Rs.2000/- is fixed and the same need not be modified. For travel expenditure it is fixed at Rs.5000/- and the same



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need not be modified. Medical expenditure is awarded to a tune of Rs. 3,70,000/- and the same need not be modified. As far as loss of marital prospects, considering the fact that the injured is a girl child, no compensation is awarded and I am of the considered view that an amount of Rs.4,00,000/- should be awarded. Considering all the above circumstances, the award passed by the Tribunal is modified as follows:

| S. N o. | Description                                                                               | Amount awarded by the Tribunal | Amount awarded by this Court | Award confirmed or enhanced |
|---------|-------------------------------------------------------------------------------------------|--------------------------------|------------------------------|-----------------------------|
| 1.      | For loss of income due to disability<br>(Rs.14,000/- x 12 x 15 x 50/100 = Rs.12,60,000/-) | Rs.8,64,000/-                  | Rs.12,60,000/-               | Enhanced                    |
| 2.      | For loss of pain, agony and trauma                                                        | Rs.40,000/-                    | Rs.2,00,000/-                | Enhanced                    |
| 3.      | For nourishment                                                                           | Rs.10,000/-                    | Rs.50,000/-                  | Enhanced                    |
| 4.      | For attendant charges during treatment                                                    | Rs.15,000/-                    | Rs.15,000/-                  | Confirmed                   |
| 5.      | For loss of dress and amenities                                                           | Rs.2,000/-                     | Rs.2,000/-                   | Confirmed                   |
| 6.      | For travel expenditure                                                                    | Rs.5,000/-                     | Rs.5,000/-                   | Confirmed                   |
| 7.      | For medical expenditure                                                                   | Rs.3,70,000/-                  | Rs.3,70,000/-                | Confirmed                   |
| 8.      | For loss of martial prospects                                                             | -                              | Rs.4,00,000/-                | Granted                     |



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|  |              |                       |                       |                                           |
|--|--------------|-----------------------|-----------------------|-------------------------------------------|
|  | <b>Total</b> | <b>Rs.13,06,000/-</b> | <b>Rs.23,02,000/-</b> | <b>Enhanced<br/>by Rs.<br/>9,96,000/-</b> |
|--|--------------|-----------------------|-----------------------|-------------------------------------------|

10. The learned Counsel appearing for the second respondent vehemently objected for awarding Rs.4,00,000/- under the head of loss of marital prospects and awarding Rs.2,00,000/- under the head of the pain agony and trauma.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,06,000/- (Rupees Thirteen Lakh Six Thousand only) is hereby enhanced to Rs.23,02,000/- (Rupees Twenty Three Lakh Two Thousand only). The claimant is entitled to get compensation, as per the apportionment made by the Tribunal.

12. The second respondent/ Insurance Company is directed to deposit the enhanced compensation amount with 7.5% interest and costs to the credit of M.C.O.P.No.1228 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Tenkasi, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the



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amount, if any already deposited. The Tribunal is directed to deposit the share of the minor child in any one of the Nationalized Bank in the name of the child until the child attain majority. The mother who is the guardian of the minor child is permitted the withdraw the interest amount once in three months. Once the minor claimant attain majority she is permitted to withdraw her share. Since this Court is enhancing the compensation, the claimant is liable to pay the balance Court fee. No costs.

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
jbr

**21.02.2025**

To

1. The Special Sub Judge /MACT, Madurai.
2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**L.VICTORIA GOWRI, J.,**

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