

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2717 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation, Villupuram.

... Appellant/Respondent

vs.

Minor Varsaa,
rep. by guardian, mother,
Mrs.Vijayalakshmi.

... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 17.4.2014, made in M.C.O.P.No.395 of 2011, on the file of the Motor Accident Claims Tribunal/ Subordinate Court, Chidambaram.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

This Appeal has been directed against the Judgment and Decree dated 17.4.2014 in MCOP No.395 of 2011 passed by the Motor Accident Claims Tribunal/Sub-ordinate Court, Chidambaram awarding a sum of Rs.1,25,000/- with interest @ 7.5% p.a. from the date of claim petition till the date of realisation and costs.

2. On 20.8.2011 at 4.15 p.m., Minor Varsaa and her guardian and mother - Vijayalakshmi, along with her uncle and aunt were walking on the left side of Venugopal Pillai Street in front of Kalyanam Hotel in Chidambaram, at that time, the appellant's Bus driven by its driver in a rash and negligent manner came from the opposite direction and dashed against Minor Varsaa and caused her grievous injuries and fracture on both the legs. Immediately, she was admitted as inpatient at Rajah Muthiah Medical College & Hospital, Annamalai Nagar. Later, she was admitted in a private hospital at Bangalore for further treatment. For the injuries and fractures suffered by the respondent/claimant, a claim petition was filed claiming a sum of Rs.10,00,000/-.

3. On consideration of pleadings and evidence, by Judgment and Decree dated 17.4.2014 in MCOP No.395 of 2011, the Tribunal awarded a sum of Rs.1,25,000/- with interest @ 7.5% from the date of petition till the date of realisation and costs. Aggrieved over the said Judgment and Decree, the present Appeal has been filed by the Tamil Nadu State Transport Corporation, Villupuram.

4. The learned counsel appearing for the appellant Transport Corporation would submit that the respondent, namely, Minor Varsaa was roaming here and there and fell down on the Tar Road at the time of the accident and the driver of the appellant Transport Bus was not negligent in driving the Bus and therefore, the Tribunal was not justified in fixing negligence on the part of the driver of the appellant Transport Corporation and awarding a sum of Rs.1,25,000/- along with interest for the injuries suffered by the respondent/claimant. Adding further, the learned counsel appearing for the appellant would submit that the disability of the respondent/injured caused in the accident to the extent of 15% is unacceptable. Similarly, the sum of Rs.50,000/- awarded by the Tribunal for pain and sufferings is on the higher side. Therefore, on these grounds, the learned counsel appearing for the appellant would submit that the impugned judgment and decree is liable to be interfered with.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. This Court is unable to accept the contention of the learned counsel appearing for the appellant that the driver of the appellant Bus was not negligent. The driver of the appellant Bus was examined before the Tribunal as RW.1. Though in his deposition, he has stated that he has given a complaint about the accident and he was not responsible for the accident, no document has been produced before the Court in support of his claim. Though he has also stated that he was acquitted in the criminal case, he has not produced any material in support of his claim. On the other hand, the mother of the Minor Varsaa was examined as PW.1. She has narrated the manner of the accident as stated in the FIR Ex.P.1. Therefore, based on the materials on record, the Tribunal held that the driver of the appellant Bus was negligent in causing the accident. Hence, this Court finds no infirmity in the said finding of the Tribunal.

7. As regards to the contention that the award of Rs.30,000/- towards permanent disability is baseless, it is to be noted that the Doctor PW.2 who examined the respondent/Minor

Injured has issued a Disability Certificate Ex.P.8 after taking into consideration the injuries and fractures suffered by the respondent/Minor injured stating the disability as 15%. Therefore, the Tribunal has fixed a sum of Rs.30,000/- at the rate of Rs.2,000/- per percentage (Rs.2,000 X 15), which in the considered opinion of this Court cannot be stated to be baseless or fanciful.

8. As regards to the contention that the award of Rs.50,000/- towards pain sufferings is higher, considering nature of the injuries and fractures and the treatment taken by the injured for the same at the tender age, the Tribunal has fixed the sum of Rs.50,000/- towards pain and sufferings. This Court also sees no infirmity in this conclusion, for, the injured boy aged about 2½ years was taking treatment from two hospitals for his injuries, viz., Raja Muthiya Medical College Hospital and after taking treatment in the beginning, he has taken treatment from another Hospital viz., Sparce Hosptial at Bangalore. These facts are supported by Exs.P.2, P.3 and P.5. Therefore, this Court finds no infirmity in fixing Rs.1,30,000/- towards partial permanent disability of 15%.

9. Therefore, for the reasons stated above, the Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition is closed.

10. The appellant Transport Corporation is directed to deposit the entire award amount including interest and costs less if any amount already deposited, to the credit of MCOP No.395 of 2011 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Chidambaram within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to deposit the entire award amount in any one of the nationalised banks till the respondent/minor claimant attains majority. The guardian and mother of the respondent/minor claimant, namely, Vijayalakshmi is entitled to withdraw interest once in three months to meet out educational and personal expenses of the minor claimant. On attaining majority, the respondent/claimant is entitled to withdraw the entire amount in deposit by filing proper application before the Tribunal.

sd/-

Assistant Registrar(Cs-II)

/TRUE COPY/

Sub-Assistant Registrar

asvm

To

1.The Motor Accident Claims Tribunal/
Subordinate Court, Chidambaram.

2.The Managing Director,
Tamil Nadu State Transport
Corporation, Villupuram

C.M.A.No.2717 of 2015
and
M.P.No.1 of 2015

CO-SKV
JD 28/01/2016



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