

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.391 of 2015
and M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation, Division 1,
Villupuram District.

Appellant / Respondent

vs.

Kalaiselvi

Respondent/Petitioner

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 20.08.2013 made in MCOP No.639 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Thiruvallur. (Motor Accident Claims Tribunal)

For Appellant : Mr.S.Sairaman
For Respondent : Mr.M.Selvam

J U D G M E N T

The appeal has been preferred by the transport corporation against the award of Rs.4,20,000/- as compensation for the injuries sustained by the claimant in the accident occurred on 12.01.2009.

2. Heard Mr.S.Sairaman, learned counsel appearing for the appellant and Mr.M.Selvam, learned counsel appearing for the respondent/claimant.

3. It is the contention of the learned counsel for the transport corporation that the claimant herself invited the accident by getting into the bus through the front entry and therefore the transport corporation is not responsible for the accident. Secondly, he would find fault with 55% disability determined by the tribunal and awarding of Rs.1,10,000/- as compensation under the said head and Rs.35,000/- towards pain & sufferings.

4. The claimant, while getting into the bus fell down and sustained injuries as the bus was started rash and negligently. Even though Mr.S.Sairaman, learned counsel appearing for the appellant

very strenuously argued that the claimant alone invited the accident, it is evident from PW2, eye-witness and Ex.P1 - FIR which was filed against the driver of the bus that the accident has occurred because of the rash and negligent driving of the driver of the transport corporation. Assuming for a moment that the children are getting into the bus contrary to the rules, it does not mean that the bus driver, rash and negligently can start the vehicle. We cannot expect the children, especially school children, when they get into the bus in a group, to follow the rules. When school children are getting into the bus, the driver is expected to be very patient enough and ensure that all the children got into the bus/got down from the bus and thereafter only start the bus, that too, after hearing whistle blown by the conductor. It is evident from the evidence of PW2, eye-witness that the accident occurred because of the rash and negligent driving of the driver of the transport corporation. Therefore the contention of the learned counsel for the appellant is rejected.

5. On the other hand, Mr.M.Selvam, learned counsel appearing for the respondent/claimant would submit that the tribunal erroneously awarded a sum of Rs.1,10,000/- by awarding Rs.2,000/- per percentage of disability whereas the case in hand requires application of multiplier method as the claimant sustained disfigurement of her leg and her marital prospects are very bleak.

6. Heard the parties and perused the records.

7. The tribunal, based on PW3 - doctor's evidence determined the disability at 55%. It is seen from the records that the claimant sustained right femur bone fracture and there was a malunion with bent form resulting in shortening of the right leg by 1½ inch ; the muscles got stiffen in the fracture area and therefore the movement is also restricted by 80 degree; that the claimant is unable to walk fast, sit and squat upon the floor normally.

8. The respondent/claimant is present before this court and she was referred to Orthopaedic surgeon, attached to the High Court Dispensary who assessed the disability at 75%. Moreover, the very look of the claimant itself would suggest that she sustained very serious injuries and because of that she is unable to walk properly and there is ugly look of her leg. With these disfigurement and ugly look, it is impossible for a lady to get married and to put it in other words, the marital status of the girl has become bleak.

9. It is seen from the records that the claimant was originally admitted in the Karthic hospital, Thiruvottriyur on 12.01.2009 and skin grafting was done by plastic surgeon. She was discharged on 03.03.2009. Again she was admitted in the same hospital on 17.03.2009 and discharged on 19.03.2009. Thereafter, she was admitted as in-patient at MIOT Hospital for 13 days from 18.06.2009 to 30.06.2009. From the above, it is clear that the

injuries sustained by the claimant is very serious and she has been transferred from one hospital to another. Therefore, this court re-determines the disability at 75%, based on the opinion of the orthopaedic surgeon attached to the High Court Dispensary as well as the medical records namely, Exs.P6 to P14.

10. The claimant was aged about 14 years at the time of accident. In V. Mekala vs M. Malathi & Anr reported in 2014 (2) TANMAC 6 (SC), the Hon'ble Supreme Court took Rs.18,000/- as the monthly income for a student aged about 16 years who sustained injuries in the accident. In the case on hand, the claimant is aged about 14 years and was studying VIII standard at the time of accident and therefore this court determines the monthly income at Rs.6,000/- instead of Rs.18,000/-, as held by the Hon'ble Supreme Court in that case. As per the age of the claimant, the appropriate multiplier is 15 and the disability is 75%. The loss of income is calculated as follows -

$$\text{Rs.6000} \times 12 \times 15 \times 75/100 = \text{Rs.8,10,000/-}$$

11. In view of the above, Rs.1,10,000/- awarded by the tribunal towards disability is deleted. Rs.2,51,148/- awarded towards medical expenses is based on Exs.P10 to P12 and hence the same is confirmed. Similarly, Rs.35,000/- awarded towards pain & sufferings is also confirmed. Rs.5,000/- each awarded towards extra nourishment and transportation is low and the same is enhanced to Rs.10,000/- each. However, Rs.13,500/- awarded towards attender charges is reasonable and the same is confirmed. As already observed, the marital prospects of the claimant has become very bleak as the wound and disfigurement of the leg has given an ugly look to the claimant and with that, no person would come forward to marry her and therefore a sum of Rs.75,000/- is awarded under this head. Thus, the amount of Rs.4,20,000/- awarded by the tribunal is hereby enhanced to Rs.12,04,648/-, rounded off to Rs.12,00,000/-, break-up as follows -

(1) Permanent disability	...	Rs. 8,10,000/-
(2) Pain & Sufferings	...	Rs. 35,000/-
(3) Extra nourishment	...	Rs. 10,000/-
(4) Medical bills	...	Rs. 2,51,148/-
(5) Transport expenses	...	Rs. 10,000/-
(6) Attender charges	...	Rs. 13,500/-
(7) Loss of marital prospects	...	Rs. 75,000/-

Total	...	Rs.12,04,648/-
		=====

Rounded off to Rs.12,00,000/-.

The rate of interest awarded by the tribunal at 9% is hereby reduced to 7.5%.

12. Though the appeal has been preferred by the Transport Corporation, by re-appreciating the evidence on record and invoking Order XLI Rule 33, this Court suo motu enhances the compensation from Rs.4,20,000/- to Rs.12,00,000/-, in the absence of any appeal or cross appeal filed by the claimant since the provisions of Motor Vehicles Act are beneficial in nature. What is required to be awarded is only a just compensation.

13. In the result, this Civil Miscellaneous Appeal is dismissed enhancing the compensation from Rs.4,20,000/- to Rs.12,00,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

14. The appellant Transport Corporation is directed to bring a Demand Draft for the entire amount awarded by this Court, alongwith interest and costs, in favour of the claimant, on or before 30.07.2015. In the event of failure on the part of the appellant/Transport Corporation to bring the Demand draft in favour of the claimant for the entire award amount alongwith interest and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on that day.

15. The learned counsel for the respondent/claimant is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

16. Call the matter on 31.07.2015 for reporting compliance. Registry is directed to forward a copy of this order directly to the respondent/claimant, free of cost.

Sd/-

Assistant Registrar

True Copy सत्यमेव जयते

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Thiruvallur.

2.The Section Officer, /Posting, Judicial Section High Court, Madras-104.

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3.The Sub Asst.Registrar(AE), High Court, Madras-104.

4.Ms.Kalaiselvi, D/o.Ramachandran, Karakkumbakkam Colony Village,
Uthukkottai Taluk, Tiruvallur District.

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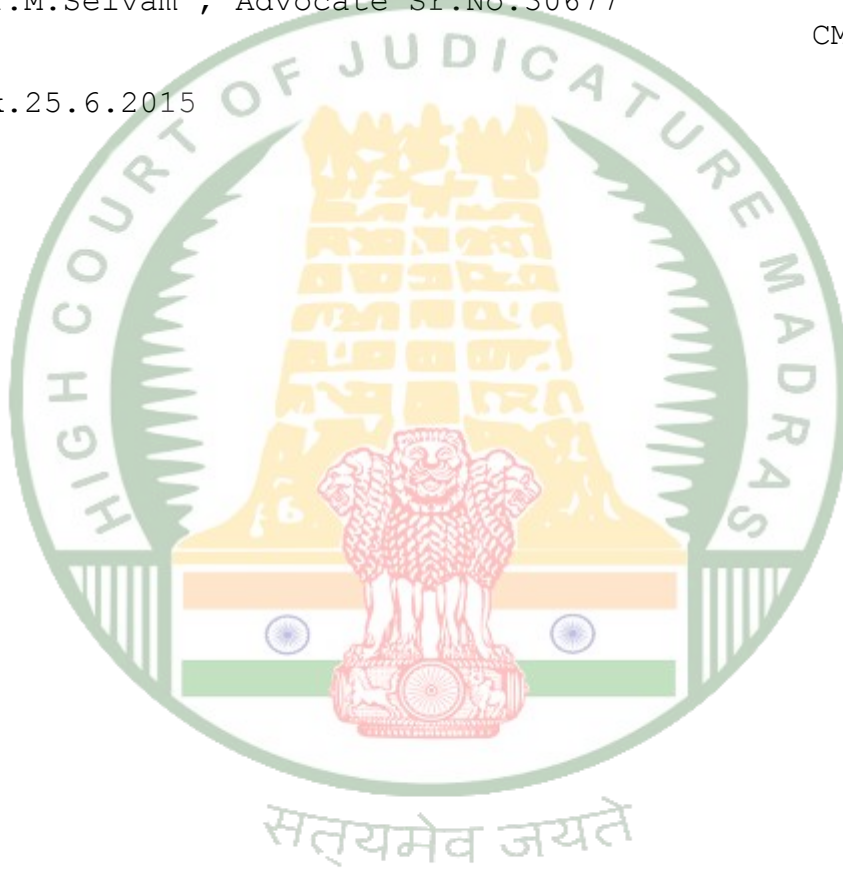
the Managing Director,
TamilNadu State Transport Corporation,
Division -I, Villupuram District.

1 cc to Mr. S.Sairaman, Advocate Sr.No.30991

1 cc to Mr.M.Selvam , Advocate Sr.No.30677

CMA No.391 of 2015

rsk(co)pmk.25.6.2015



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