

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

C O R A M

The Hon'ble Mr.Justice T.Raja

C.M.A.No.2542 of 2015
and
Cross Objection No.1 of 2016

The Managing Director
Tamil Nadu State Transport Corporation,
3/137, Salamedu, Vazhuthareddy,
Villupuram.

...Appellant in C.M.A.
Respondent in Cross Objection

Vs

Minor P.Vidhya
rep. by her father and natural Guardian
Pazhaniyandi.
No.18, K.Nellikuppam
Kurinjipadi,
Cuddalore Taluk,
Cuddalore District.

...Respondent in C.M.A.
Cross Objector

Civil Miscellaneous Appeal filed against the judgment and decree, dated 16.06.2015, passed in M.C.O.P.No.2648 of 2012, on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Cuddalore District.

Cross Objection filed under Order XLI Rule 22 of C.P.C. against the judgment and decree, dated 16.06.2015, passed in M.C.O.P.No.2648 of 2012, on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Cuddalore District.

For Appellant in C.M.A.
& Respondent in Cross Objection : Mr.S.Sairaman

For Respondent in C.M.A.
& Cross Objector : Ms.Ramya V.Rao

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeal filed by the Transport Corporation and the Cross Objection filed by the claimant have been directed against the very same judgment and decree passed by the learned II Additional Special Judge, Motor Accident Claims Tribunal, Cuddalore District, in M.C.O.P.No.2648 of 2012, dated 16.06.2015, they were heard together, and disposed of, by this common Judgment.

2. On 02.07.2012, at 12.45 p.m., when the claimant was riding on a bicycle on the left side of the Vadalur Neyveli main road, at Vadalur, from east to west direction, a Bus, bearing Registration No.TN-32-N-3411 TNSTC, belonging to the State Transport Corporation, which came in the same direction, hit behind the claimant, as a result, she sustained multiple grievous injuries and sustained fracture on the right iliac bone; iliac blade external degloning injury; right linear tear, extending to rectum; distal rectum detached and retracted. Immediately, she was rushed to the Government Hospital, Cuddalore, and therefrom, she was shifted to Jawarharlal Institute of Post Graduate Medical Education and Research Hospital (JIPMER Hospital) where, she was admitted as inpatient, and underwent treatment for 30 days.

2.1 Regarding the said accident, an FIR was also registered against the driver of the Bus, in Crime No.441 of 2012, on the file of Vadalur Police Station for offences under Sections 279 and 337 of the Indian Penal Code (marked as Ex.P.1). When a complaint was given by the father of the minor girl, a Report was also filed by the Motor Vehicle Inspector with regard to the involvement of the Bus in the said accident (marked as Ex.P.2) stating that the accident did not occur due to any mechanical defect of the vehicle (Bus).

2.2. The injured, P.Vidya, a minor girl, aged about 17 years, represented by her father, filed a Claim Petition before the learned Tribunal, in M.C.O.P.No.2648 of 2012, claiming a total compensation of Rs.5,00,000/- under various heads.

2.3. The Transport Corporation filed a counter statement, resisting the claim of the injured.

2.4 Before the Tribunal, on the side of the claimant, two witnesses, viz., i) P.W.1, the claimant's father and ii) P.W.2, the Doctor (Orthopedist) were examined, and totally, nine exhibits were marked, viz., i) Ex.P.1/FIR Copy; Ex.P.2/Motor Vehicle Inspector's Report; Ex.P.3, Copy of Accident Register

issued by the Government Headquarters Hospital, Cuddalore; Ex.P.4, Discharge Summary issued by JIPMER Hospital; Ex.P.5 Prescription Slip; Ex.P.6, Medical Bills and Ex.P.7, X-ray; Ex.P.8, Disability Certificate and Ex.P.9, Permanent Disability certificate issued by Doctor/P.W.2. On behalf of the Transport Corporation, neither any witness was examined, nor documentary evidence was adduced.

2.5 The learned Tribunal, on evaluation of both pleadings and evidence, held that the accident occurred solely due to the rash and negligent driving of the driver of the Bus, belonging to the Transport Corporation, and directed the Transport Corporation to pay a sum of Rs.2,65,000/- as compensation to the claimant together with interest at the rate of 7.5% from the date of Petition till the date of deposit.

3. Questioning the quantum of compensation, the Transport Corporation has filed the present Civil Miscellaneous Appeal, contending that the compensation fixed by the learned Tribunal is high and excessive. Whereas, finding the aforesaid compensation as insufficient, the claimant has filed the Cross Objection.

4. Mr.S.Sairaman, learned counsel for the Transport Corporation would submit that, the learned Tribunal, on the basis of the Disability Certificate/Exs.P.8 issued by the Doctor Venugopal/PW.2, wrongly came to the conclusion that, Rs.2,00,000/- should be awarded towards the 'Loss of partial permanent disability'. Therefore, the same has to be reduced. Again, he would submit that, since the injured claimant was a minor student, the learned Tribunal, moved by the sway of passion, awarded Rs.20,000/- towards 'Pain and Suffering'. Finally, huge, unreasonable and exorbitant amount of compensation is awarded, and therefore, the same is liable to be reasonably modified.

5. Repelling/refuting the above contentions of the learned counsel for Transport Corporation, Ms.Ramya V.Rao, learned counsel appearing for the injured claimant would pyramid her arguments, by submitting that, due to the said accident, the claimant, who is a poor, minor school going girl has sustained multiple grievous injuries, and she was admitted as inpatient in the JIPMER Hospital and underwent treatment for 30 days (from 02.07.2012 to 31.07.2012); Apart from multiple injuries, she sustained fracture on the right iliac bone; iliac blade external; degloning injury; right linear tear, extending to rectum; distal rectum detached and retracted, resulting in permanent disability.

5.1 Further, P.W.2/Dr.Venugopal issued Ex.P.8/Disability certificate, in and under which, permanent disability sustained by the claimant is assessed at 60%. It is deposed by P.W.2/Dr. that the movement of the right hip of the injured is restricted, as an aftermath, it is very difficult for her to carry on her day to day work, and she cannot do hard work any more.

5.2 The learned counsel further submits that, when there was no evidence adduced on the side of Transport Corporation to controvert the evidence of P.W.2 (Doctor), the learned Tribunal concurred with the case of the claimant, and rightly saddled the liability on the Transport Corporation, and directed it to pay the compensation, but, while fixing the quantum of compensation towards 'Permanent Disability' and 'Pain and Sufferings' awarded lesser amount.

5.3 In regard to the compensation awarded under the head 'Permanent Disability', the learned counsel submits that, if the disability is upto 60% to the whole body, a sum of Rs.4,00,000/- should be awarded as compensation, and in support of the said contention, reliance has been placed on the decision of the Hon'ble Supreme Court, in re (Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another), reported in (2013) 4 T.A.C.1. S.C. Learned counsel submits that, admittedly, in the present case, though the claimant stated that she has suffered permanent disability, and the same is also proven, by adducing unimpeachable evidence, viz., Ex.P.8 and P.9, given by P.W.2/Doctor, wherein, he has assessed the disability at 60%, the learned Tribunal ought not to have awarded lesser sum of Rs.2,00,000/- towards Permanent Disability and the same requires modification.

5.4 The learned counsel submits that, similarly, the compensation awarded under the head 'Pain and Sufferings' is low. The learned counsel submits that the claimant, being a minor girl, suffered grievous injuries, and in Ex.P.3, it is specifically mentioned that there was laceration 7x3x3 c.m. on right hip, abrasion 10 x 5 c.m on right forehead, abrasion on right elbow, which are grievous in nature, but, the learned Tribunal has failed to take note of the same, and awarded only Rs.20,000/-. Hence, the same needs to be enhanced.

5.5. The learned counsel furthermore submits that the injured also underwent surgery and owing to the same, there was big scar left on the right side of the waist and there was slight disfigurement, and as soon as she attains adulthood, necessity would arise for her to wear Saree, if she opts for the said attire, the disfigurement could be easily visible, which is sore to the eyes, due to which, she may suffer mentally. The

learned counsel pleaded that this Court shall take into account all these aspects, and shall award compensation under the head 'Loss of Expectation to life'.

6. I find merit and force on the submissions made by the learned counsel for the claimant. As rightly pointed out by the learned counsel for the claimant, the injured is a minor school going girl, and due to the said accident, she suffered multiple injuries and fracture on the hip. The deposition of P.W.2 also clearly shows that she had sustained multiple injuries, which are grievous in nature, (morefully described in the preceding para this Judgment). Therefore, when the evidence of P.W.2/Doctor candidly shows that the injured has indeed sustained 60% permanent disability, this Court has no hesitation to re-determine the compensation towards the head 'Partial Permanent Disability', and the same is enhanced to Rs.3,00,000/-.

6.1 Likewise, the compensation awarded by the learned Tribunal at Rs.20,000/- towards the head 'Pain and Sufferings' is meager, as the injured has taken treatment in JIPMER Hospital for 30 days (from 02.07.2012 to 31.07.2012) evidently seen from Ex.P.4/Discharge Summary issued by the JIPMER Hospital, and underwent surgery on the waist and suffers disfigurement (as could be seen from the photograph of the injured produced by the learned counsel for the injured today). Therefore, the compensation awarded under the head Pain and Sufferings is enhanced to Rs.50,000/-.

6.2 As already mentioned above, when the injured claimant had sustained multiple grievous injuries and also undergone surgery, and suffers 60% permanent disability, this Court is inclined to award compensation towards 'Loss of Expectation to Life, which has been fixed at Rs.50,000/-. Insofar as the compensation awarded under the other heads are concerned, the same are found reasonable and this Court is not inclined to interfere with the same.

7. In the upshot, the Civil Miscellaneous Appeal filed by the Transport Corporation fails and it is dismissed accordingly.

8. The Cross-objection filed by the injured claimant is allowed.

9. The Transport Corporation is directed to deposit the enhanced award amount of Rs.4,45,000/- with proportionate interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy

of this judgment, as it is seen that, this Court, at the time of entertaining this Civil Miscellaneous Appeal, i.e., 18.11.2015, directed the appellant/Transport Corporation to deposit the entire award, as awarded by the learned Tribunal. On such deposit being made, the claimant is permitted to withdraw the entire award amount of Rs.4,45,000/- by making necessary cheque petition before the learned Tribunal.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross-objection is allowed, as indicated above. No costs. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore District.

Copy to
The Section Officer, VR. Section,
High Court, Madras.

+1cc to Mr.Sairaman, Advocate, S.R.No.65613
+1cc to Mr.Viswanatha Rao, Advocate, S.R.No.66257

MG(CO)
RS(14/02/2017)

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and
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