

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL Nos.2779 & 2780 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Villupuram - 605 602.

... Appellant in both
appeals/Respondent

vs.

1. R.Saranya ... Respondent in
C.M.A.No.2779/2015/Petitioner
2. R.Riyashree (Minor)
(Reptd by her father & N.F.R.Rajini) ... Respondent in
C.M.A.No.2780/2015/Petitioner

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 25.06.2015 made in M.C.O.P.Nos.1059 & 1060 of 2013 on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant in both appeals : Mr.K.J.Sivakumar

For Respondent in both appeals: Mrs.P.T.Salim Fathima

C O M M O N J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

As the issue and facts involved in both the appeals are one and the same, they are taken up for disposal by a common judgment.

2. Heard the learned counsel for the appellant/Transport Corporation and the learned counsel appearing for the respondents/claimants.

3. Challenging the common award of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai, dated

25.06.2015 in M.C.O.P.Nos.1059 & 1060 of 2013, the Transport Corporation has come up with the present appeals.

4. The claimants in the above appeals are the injured mother and her injured minor daughter. On 16.01.2013, about 16.20 hours, when the claimant viz. R.Saranya was riding her TVS Scooty Pep bearing Registration No.TN-02-AS-0761 along with her minor daughter, viz. R.Riyashree, the other claimant, from west to east direction on Koyambedu Flyover near Koyambedu Service road junction on the east gradient of the flyover, a Bus bearing Registration No.TN-32-N-3831 came from behind in a very high speed in a rash and negligent manner, endangering public safety, swerved the vehicle to the left of the Service road and dashed against the TVS Scooty Pep, due to which, both the claimants sustained multifarious fractures and injuries. Alleging that the driver of the Bus alone is responsible for the accident, both the claimants filed individual claim petitions before the Tribunal seeking compensation for the injuries sustained by them. The claimant, R.Saranya filed a claim petition in M.C.O.P.No.1059 of 2013 seeking a sum of Rs.11,00,000/- as compensation and the minor claimant, R.Riyashree, represented by her father, filed a claim petition in M.C.O.P.No.1060 of 2013 seeking a sum of Rs.56,00,000/- as compensation.

5. The appellant/Transport Corporation resisted both the claim petitions before the Tribunal contending that the rider of the Two-wheeler did not possess valid driving licence at the time of the alleged accident and that the compensation claimed by them under various heads is very excessive.

6. Before the Tribunal, in support of the claim, Mrs.R.Saranya, the claimant in M.C.O.P.No.1059 of 2013 was examined as P.W.1; Mr.Rajini, father of the minor claimant in M.C.O.P.No.1060 of 2013 was examined as P.W.2; Dr.Amarnath R.Sowlee was examined as P.W.3 and Exs.P1 to P25 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	Copy of Sketch
Ex.P-3	Copy of Accident Register (O.P.No.1059/2013)
Ex.P-4	Treatment Certificate (O.P.No.1059/2013)
Ex.P-5	O.P. Chit - M.N.Hospital (O.P.No.1059/2013)
Ex.P-6	Medical Certificate - Kumaran Hospital (O.P.No.1059/2013)
Ex.P-7	Medical Bills for Rs.1,021/- (O.P.No.1059/2013)
Ex.P-8	Copy of Accident Register (O.P.No.1060/2013)
Ex.P-9	Wound Certificate (O.P.No.1060/2013)

Ex.P-10	Discharge Summary - I (O.P.No.1060/2013)
Ex.P-11	Discharge Summary - II (O.P.No.1060/2013)
Ex.P-12	Discharge Summary - III (O.P.No.1060/2013)
Ex.P-13	Discharge Summary - IV (O.P.No.1060/2013)
Ex.P-14	Inpatient Bills for Rs.3,38,361.75 ps (1) (O.P.No.1060/2013)
Ex.P-15	Inpatient Bills for Rs.58,139.75 ps (2) (O.P.No.1060/2013)
Ex.P-16	Inpatient Bills for Rs.33,783.32 ps (O.P.No.1060/2013)
Ex.P-17	Receipt for I.P. Payment (O.P.No.1060/2013)
Ex.P-18	Medical Bills for Rs.53,940.18 ps (O.P.No.1060/2013)
Ex.P-19	Copy of School Identity Card (O.P.No.1060/2013)
Ex.P-20	Photos (4 Nos.) (O.P.No.1060/2013)
Ex.P-21	C.D.
Ex.P-22	Disability Certificate of P.W.1/claimant in O.P.No.1059/2013 issued by P.W.3
Ex.P-23	X-ray (O.P.No.1060/2013)
Ex.P-24	X-ray (O.P.No.1059/2013)
Ex.P-25	Disability Certificate of the claimant in O.P.No.1060/2013 issued by P.W.3

On the side of the appellant/Transport Corporation, the driver of the Bus, one P.Nakesh was examined as R.W.1, but, no document was marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R., came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the Bus bearing Registration No.TN-32-N-3831 and awarded a sum of Rs.4,02,000/- as compensation to the claimant in M.C.O.P.No.1059 of 2013 and a sum of Rs.16,62,000/- as compensation to the claimant in M.C.O.P.No.1060 of 2013 with interest at 7.5% per annum from the date of filing the claim petition till the date of realization, under the following heads:
M.C.O.P.No.1059 of 2013:

S.No.	Heads	Amount awarded by the Tribunal
1	Disability	Rs. 60,000.00
2	Pain & Suffering	Rs. 75,000.00
3	Extra nourishment	Rs. 50,000.00

S.No.	Heads	Amount awarded by the Tribunal
4	Transport to Hospital	Rs. 40,000.00
5	Damages to Clothes	Rs. 3,000.00
6	Attender Charges	Rs. 35,000.00
7	Medical Expenses	Rs. 1,000.00
8	Future Medical Expenses	Rs. 25,000.00
9	Loss of income	Rs. 78,000.00
10	Loss of earning power	Rs. 20,000.00
11	Loss of amenities	Rs. 15,000.00
	Total compensation	Rs.4,02,000.00

M.C.O.P.No.1060 of 2013:

S.No.	Heads	Amount awarded by the Tribunal
1	Disability	Rs. 4,00,000.00
2	Pain & Suffering	Rs. 2,00,000.00
3	Extra nourishment	Rs. 1,00,000.00
4	Transport to Hospital	Rs. 1,50,000.00
5	Damages to Clothes	Rs. 3,000.00
6	Attender Charges	Rs. 1,00,000.00
7	Medical Expenses	Rs. 4,84,000.00
8	Future Medical Expenses	Rs. 1,00,000.00
9	Loss of Amenities	Rs. 25,000.00
10	Loss of Marital Prospects	Rs. 1,00,000.00
	Total compensation	Rs.16,62,000.00

8. The main contention of the learned counsel appearing for the appellant/Transport Corporation is that the quantum of compensation awarded by the Tribunal to both the claimants under various heads is on the higher side. Seeking modification of the same, he would submit that the Tribunal erred in considering only the evidence of P.W.1, whose evidence is not corroborated by any other independent witness.

9. In reply, learned counsel appearing for the respondents/claimants would submit that the compensation awarded by the Tribunal is certainly not on the higher side, when compared to the injuries sustained by the claimants, more particularly, the minor claimant.

10. The only point for consideration in these appeals is whether the quantum of compensation awarded by the Tribunal to both claimants are reasonable or on the higher side.

11. On a perusal of the material records, it is seen that at the time of accident, the claimant, Mrs.R.Saranya was aged 23 years and she sustained (i) multiple compound and communitated fracture in right hand fingers, palm and wrist leading to restriction of movements of wrist and fingers (ii) severe injury in face (iii) Dislocation of bone and degloving injury in both hands elbow and both legs knee and (iv) multiple internal and external injuries all over the body. For the said injuries, P.W.3 - Doctor, who examined the claimant, R.Saranya, assessed her permanent disability at 25%. But, the Tribunal fixed her permanent disability at 20%. Looking at the injuries suffered by the claimant, R.Saranya, this Court has no reason to interfere with the percentage of disability fixed by the Tribunal and accordingly, it is confirmed. Thus, the compensation of a sum of Rs.60,000/- awarded by the Tribunal towards 20% disability is confirmed.

12. Coming to the income aspect, the claimant R.Saranya has averred that she was doing ready-made garment business and earning a sum of Rs.10,000/- per month. In the absence of any proof to support her avocation, the Tribunal fixed her monthly income at Rs.6,500/- and awarded a sum of Rs.78,000/- as compensation towards 'loss of income for a period of one year'. Admittedly, there is no proof to support her avocation. Whether she was making out Rs.6,500/- every month in ready-made garment business is not known. Also, the Transport Corporation has strongly objected on this point. Therefore, this Court feels it appropriate to modify the compensation towards 'loss of income for a period of one year' and accordingly, a sum of Rs.15,000/- is awarded towards the same.

13. Further, we find that the compensation awarded under other heads, i.e. 'Pain and Suffering', 'Extra nourishment', 'Transportation charges', 'Attender charges' and 'Future Medical expenses' are on the higher side and hence, this Court modifies the same and accordingly, a sum of Rs.40,000/- is awarded towards 'Pain and Suffering'; Rs.10,000/- towards 'Extra nourishment'; Rs.10,000/- towards 'Transportation charges'; Rs.10,000/- towards 'Attender charges' and Rs.2,500/- towards 'Future Medical Bills'.

14. A sum of Rs.3000/- awarded towards 'Damages to clothes'; Rs.1,000/- towards Medical expenses; Rs.20,000/- awarded towards 'Loss of earning power' and Rs.15,000/- awarded towards 'Loss of amenities' are found to be reasonable and the same are confirmed.

15. Accordingly, the quantum of compensation of a sum of Rs.4,02,000/- awarded by the Tribunal to the respondent/claimant in C.M.A.No.2779 of 2015, viz. R.Saranya is modified and she is entitled to a sum of Rs.1,86,500/- (Rupees One Lakh Eighty Six Thousand Five Hundred only) as compensation. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

S.No.	Heads	Award of the Tribunal	Revised award of this Court
1	Disability	Rs. 60,000.00	Rs. 60,000.00
2	Pain & Suffering	Rs. 75,000.00	Rs. 40,000.00
3	Extra nourishment	Rs. 50,000.00	Rs. 10,000.00
4	Transport to Hospital	Rs. 40,000.00	Rs. 10,000.00
5	Damages to Clothes	Rs. 3,000.00	Rs. 3,000.00
6	Attender Charges	Rs. 35,000.00	Rs. 10,000.00
7	Medical Expenses	Rs. 1,000.00	Rs. 1,000.00
8	Future Medical Expenses	Rs. 25,000.00	Rs. 2,500.00
9	Loss of income	Rs. 78,000.00	Rs. 15,000.00
10	Loss of earning power	Rs. 20,000.00	Rs. 20,000.00
11	Loss of amenities	Rs. 15,000.00	Rs. 15,000.00
	Total compensation	Rs.4,02,000 .00	Rs.1,86,500.00

16. Coming to the compensation awarded to the respondent/claimant in C.M.A.No.2780 of 2015, viz. Minor R.Riyashree, it is seen that at the time of accident, she was aged 5 years and she sustained (i) multiple fracture of both legs at knee and complete loss of muscle, skin and nerves of both legs from hip to toe (ii) fracture of right side Zygoma bone below the eye (iii) major injury in right eye and (iv) multiple internal and external injuries all over the body. Though, P.W.3 - Doctor, who examined the minor claimant,

R.Riyashree, assessed her permanent disability at 65%, the Tribunal fixed her permanent disability at 60%. A careful perusal of the Hospital records would show that the minor claimant had sustained severe fractures in her legs and multiple injuries all over her body and hence, this Court is not inclined to interfere with the percentage of disability fixed by the Tribunal and accordingly, it is confirmed.

17. The Tribunal, placing reliance on the Apex Court decision in the case of Master Mallikarjun vs. Divisional Manager, National Insurance Co. Ltd. and another [2013 (2) TNMAC 338 (SC)], awarded a sum of Rs.4,00,000/- towards '60% Disability'. Relevant portion of the said judgment is usefully extracted hereunder:

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. ..."

Thus, in view of the above, this Court is not inclined to interfere with the compensation of Rs.4,00,000/- awarded towards the disability of the minor claimant and the same is accordingly confirmed.

18. Considering the nature of injuries sustained by the minor claimant and the pain which the child has to endure in its early childhood, this Court confirms the quantum of Rs.2,00,000/- awarded by the Tribunal towards 'pain and suffering'; Rs.1,00,000/- towards 'Extra nourishment' and Rs.1,00,000/- towards 'Future medical expenses'. A sum of Rs.3,000/- awarded towards 'Damages to clothes' is also confirmed. Also, a sum of Rs.4,84,000/- awarded towards

'Medical expenses' is confirmed, since it is supported by valid proof.

19. Further, we feel that the compensation of Rs.1,50,000/- awarded towards 'Transportation expenses' and 'Rs.1,00,000/- awarded towards 'Attender charges' are on the higher side and accordingly, a sum of Rs.1,00,000/- is awarded towards 'Transportation charges' and a sum of Rs.75,000/- is awarded towards 'Attender charges'. Since enough compensation has been awarded under the head 'Disability', a sum of Rs.25,000/- awarded towards 'Loss of Amenities' is struck down. As far as the compensation of Rs.1,00,000/- awarded towards 'Loss of marital prospects' is concerned, this Court is inclined to enhance the same, as the minor claimant is a girl child. Accordingly, it is enhanced to a sum of Rs.1,50,000/-.

20. Resultantly, the compensation of a sum Rs.16,62,000/- awarded to the respondent/claimant in C.M.A.No.2780 of 2015, viz. Minor R.Riyashree is modified and she is entitled to a sum of Rs.16,12,000/- (Rupees Sixteen Lakhs Twelve Thousand only) as compensation. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

S.No.	Heads	Amount awarded by the Tribunal	Revised award of this Court
1	Disability	Rs. 4,00,000.00	Rs. 4,00,000.00
2	Pain & Suffering	Rs. 2,00,000.00	Rs. 2,00,000.00
3	Extra nourishment	Rs. 1,00,000.00	Rs. 1,00,000.00
4	Transport to Hospital	Rs. 1,50,000.00	Rs. 1,00,000.00
5	Damages to Clothes	Rs. 3,000.00	Rs. 3,000.00
6	Attender Charges	Rs. 1,00,000.00	Rs. 75,000.00
7	Medical Expenses	Rs. 4,84,000.00	Rs. 4,84,000.00
8	Future Medical Expenses	Rs. 1,00,000.00	Rs. 1,00,000.00
9	Loss of Amenities	Rs. 25,000.00	-
10	Loss of Marital Prospects	Rs. 1,00,000.00	Rs. 1,50,000.00

S.No.	Heads	Amount awarded by the Tribunal	Revised award of this Court
	Total compensation	Rs.16,62,000.00	Rs.16,12,000.00

21. The appellant/Transport Corporation is directed to deposit the entire amount awarded by this Court to both the claimants along with accrued interest to the credit of M.C.O.P.Nos.1059 and 1060 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the respondent/claimant, in C.M.A.No.2779 of 2015, viz. R.Saranya is permitted to withdraw the amount, as per the award of this Court. As far as the minor respondent/claimant in C.M.A.No.2780 of 2015, viz. R.Riyashree is concerned, the entire amount awarded by this Court shall be initially deposited in any one of the Nationalised Banks under reinvestment scheme, initially for a period of three years renewable thereafter and the interest accrued on such deposit shall be withdrawn by her natural guardian, once in three months, till she attains majority.

22. It is also made clear that the award amount shall be paid to the major claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. In the case of minor claimant, the award amount shall be paid to her in the form of a crossed Account Payee Cheque, once she attains majority.

The Civil Miscellaneous Appeals are partly allowed with the above observation. No costs. Consequently, connected M.P.Nos.1 and 2 of 2015 are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

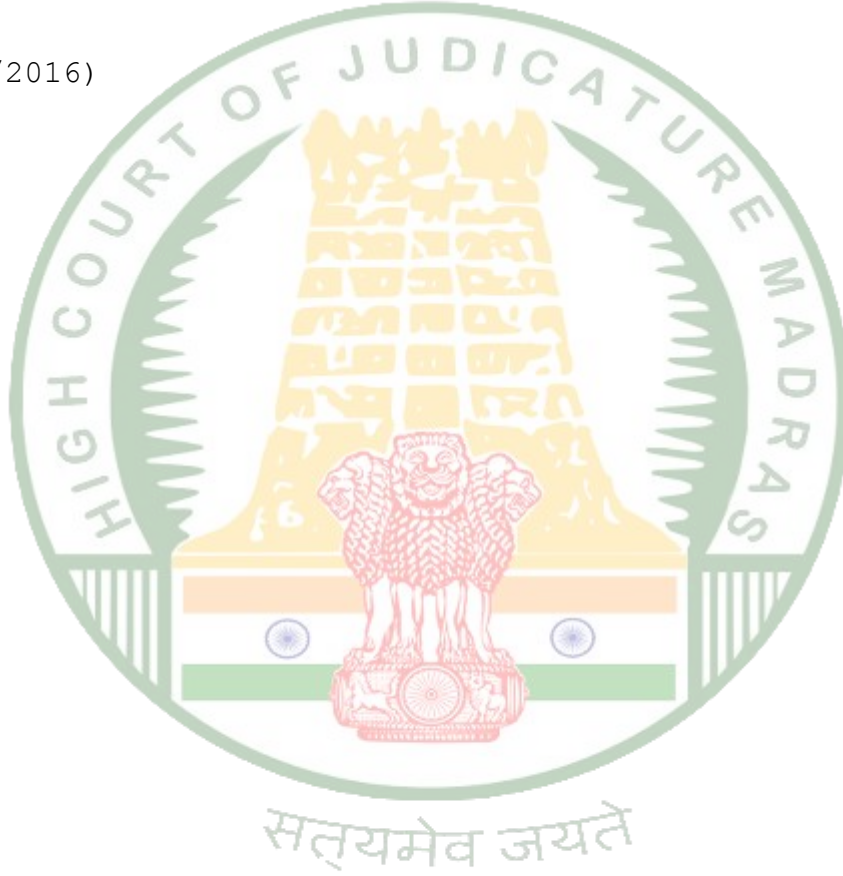
To:

The Motor Accidents Claims Tribunal
(IV Small Causes Court),
Chennai.

+2cc to M/S.M.Swamikannu, Advocate, S.R.No.9745 & 9746
+2cc to Mr.K.J.Sivakumar, Advocate, S.R.No.9935 & 9934

C.M.A.Nos.2779 & 2780 of 2015

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