

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3253 of 2014

D.Narendran (Minor) aged 15 years,  
Rep. by his father and next friend Mr.Doss,  
No.9, 4<sup>th</sup> Street, K.M.Garden,  
Perambur Baracks Road,  
Chennai-12. .. Appellant/Petitioner

Versus

The Managing Director,  
Metropolitan Transport Corp. Ltd.,  
Pallavan House, Anna Salai,  
Chennai-600 002. .. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.07.2013 made in M.C.O.P.No.1888/2011 on the file of the Motor Accidents Claims Tribunal (II Small Causes Court) Chennai.

For Appellant : Mr.T.G.Ravichandran  
For Respondent : Mr.K.S.Suresh

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant/minor, aged about 15 years studying in 10<sup>th</sup> Standard, challenging the correctness of the impugned award, dated 12.07.2013, made in M.C.O.P.No.1888/2011 on the file of the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

2.It is the case of the claimant that on 24.08.2010 at about 08.35 hours, when the appellant/claimant was travelling as passenger in the respondent/Transport Corporation bus bearing Registration No.TN-01-N-5248 in Vepery High Road, which was driven by its driver in a rash and negligent manner, he met with an accident when the driver suddenly applied the brake, resultantly, the injured who was travelling as one of the passengers in the bus, fell down from the bus and he was run

over by the same bus, thereby, he sustained grievous injuries on his left leg above knee, which was completely amputated. According to the appellant/claimant, the accident happened only due to the rash and negligent driving of the driver of the bus/respondent herein.

3.Learned counsel appearing for the appellant/claimant would submit that the claimant had suffered amputation in his left leg above knee and in addition to fracture in femur bone of right leg, he was having severe pain while standing and he is not able to stand without a walking stick. Since he lost his left leg, the learned Tribunal has miserably failed to award compensation under the heads 'mental agony' and 'fixation of artificial limb'. Adding further, he would submit that when the unfortunate accident took place on 24.08.2010, caused by the driver of the bus/the respondent herein, the appellant / claimant is unable to walk without a walking stick throughout his life. Therefore, he prays for reasonable enhancement.

4.Opposing the above contentions, learned counsel appearing for the respondent/Transport Corporation would submit that only after examining the evidence adduced by the Doctor and also the disability certificate marked as Ex.P12 and also considering Ex.P8/wound certificate, the learned Tribunal has rightly fixed Rs.4,500/- per percentage of disability. Hence, he prays for dismissal of the appeal. Learned counsel for the respondent/Transport Corporation would contend that the criminal case initiated against the driver of the vehicle was dismissed by the Criminal Court, in spite of marking the copy of the criminal court judgment in C.C.No.264 of 2011-Ex.R1 on the file of III Metropolitan Magistrate Court, George Town, Chennai, the Tribunal has found fault with the driver for causing the accident due to rash and negligent driving of the bus. The reason is that the order of acquittal was only based on the benefit of doubt. Therefore, this Court is not able to find any merit on his contention. सत्यमेव जयते

5.But this Court is not able to find any merit in the contentions made by the learned counsel for the respondent/Transport Corporation herein. The reason is that the disability certificate marked as Ex.P12 which is supported by X-ray film marked as Ex.P11 and further corroborated by the evidence of Dr.J.R.R.Thiagarajan, who was examined as PW3, would clearly show that the injured has sustained 85% disability. Therefore, as per Schedule I of Workmen Compensation Act, 1923, the said injury comes under Part-II Serial No.19, for which the disability has been given at 60%. In addition to that, he has also sustained his femur bone of right leg for which, screw has been fixed and subsequently removed and then 'K' wire fixed. The

Tribunal having seen the photograph marked as Ex.P10 which shows that he is using artificial limb for his left leg and caliber for the right leg, has fixed another 25% disability. Accordingly, the total permanent disability was fixed at 85%. After fixing the permanent disability, the Tribunal has taken Rs.4,500/- as his notional monthly income, since the accident had taken place on 24.08.2010. Keeping in mind the age of the injured viz., 15 years and also considering the fact that the artificial limb has been fixed in his left leg, this Court is inclined to fix a sum of Rs.5,000/- as his notional income instead of Rs.4,500/- fixed by the Tribunal. As the injured had fallen in the age group of 15-20, the Tribunal has rightly applied the multiplier '18'. As per the decision of the Hon'ble Apex Court in Sarla Verma v. Delhi Transportation Corporation and another reported in 2009 ACJ 1298, this Court is inclined to award a sum of Rs.2,500/- (addition of 50% to actual salary towards future prospects) towards and accordingly, the loss of earning capacity comes to  $\text{Rs.7,500} \times 12 \times 18 \times 85/100 = \text{Rs.13,77,000/-}$ . When the claimant, being a student, met with an accident and suffered amputation in his left leg above knee, it is not known how the Tribunal can refuse to fix reasonable amount of compensation towards fixation for artificial limb. Therefore, considering the fixation of artificial limb, this Court is inclined to award a sum of Rs.1,00,000/- towards artificial limb. The appellant / claimant has taken treatment as inpatient for a period of 271 days. Considering the nature of injury and period of treatment, this Court is inclined to award a reasonable sum of Rs.25,000/- each towards medical expenses and attender charges. With regard to extra nourishment, this Court is inclined to award a sum of Rs.50,000/- instead of Rs.20,000/- awarded by the Tribunal. With regard to loss of amenities, this Court is inclined to award a sum of Rs.1,00,000/- instead of Rs.10,000/- awarded by the Tribunal. With regard to the head 'pain and suffering', 'damage to clothes' and 'transportation', no interference is called for, as they are reasonable. The modified compensation as per the above discussion are as follows:

| Sl.No. | Heads             | Amount Awarded |
|--------|-------------------|----------------|
| 1      | Artificial limb   | Rs. 1,00,000/- |
| 2      | Transportation    | Rs. 20,000/-   |
| 3      | Extra nourishment | Rs. 50,000/-   |
| 4      | Damage to clothes | Rs. 1,000/-    |
| 5.     | Medical expenses  | Rs. 50,000/-   |
| 6.     | Attender charges  | Rs. 50,000/-   |

| Sl.No. | Heads                                                               | Amount Awarded  |
|--------|---------------------------------------------------------------------|-----------------|
| 7.     | Loss of amenities of life & loss of expectation of marital alliance | Rs. 1,00,000/-  |
| 8.     | Pain and suffering                                                  | Rs. 1,00,000/-  |
| 9.     | Loss of earning capacity<br>(Rs.7500 x 12x 18 x 85/100)             | Rs. 13,77,000/- |
| 10.    | Total Compensation                                                  | Rs.18,48,000/-  |

Therefore, the award amount of Rs.8,59,500/- has been enhanced to Rs.18,48,000/-.

6.In view of the above enhancement, the respondent/Transport Corporation is directed to deposit the entire award amount less the amount already deposited with interest at 7.5% p.a., within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is entitled to withdraw the modified amount, on making a proper application and payment of the additional court fee.

7.Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kal

To

1. The II Judge, Court of Small Causes,  
Motor Accidents Claims Tribunal,  
Chennai.

2. The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Mr.Suresh, Advocate, S.R.No.71438

+1cc to Mr.Ravichandren, Advocate, S.R.No.71544

NM(CO)  
RS(15/02/2017)

C.M.A. No.3253 of 2014