

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1505 of 2017

Minor Gomathi

Rep. By her mother

Nagammal

... Appellant/Petitioner

versus

1. C.Ayyasamy

2. The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
No.37, Mettupalayam Road,
Coimbatore.

... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 11.01.2012 made in M.C.O.P.No.178 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.II, Gobichettipalayam.

For Appellant : M/s.S.P.Yuvaraj

For R2 : M/s.R.T.Sundari

JUDGMENT

The claimant, Minor Gomathi, aged 14 years, a student of standard 8th std., met with an accident on 09.08.2010 in which she suffered injuries on right leg, both elbows and left leg and ultimately she suffered amputation up to thigh level. Claiming that there is a total loss of earning capacity and her total life is doomed, the minor, represented by her guardian filed a claim petition in M.C.O.P.No.178 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.II, Gobichettipalayam, claiming a sum of Rs.8,00,000/- as compensation.

2. The claims Tribunal on consideration of materials, both oral and documentary, awarded a sum of Rs.1,64,563/-. Challenging the award as inadequate, the claimant has filed this appeal.

3. The main contention raised in the grounds of appeal by

the appellant is that the loss of earning capacity and loss of martial prospects ought to have been considered. As the claimant was a student aged only 14 years, prospective increase in future income ought to have been considered, but, it has not been considered at all.

4. This Court heard the learned counsel for the respondent on the above contentions.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and perused the materials available on record as also the award passed by the Tribunal.

6. The Tribunal, while awarding compensation of a sum of Rs.1,64,653/- has given reasons, which are very strange in respect of amputation suffered by a girl aged 14 years, a student of 8th standard.

7. So far as the compensation under the head loss of earning capacity, the Tribunal, fixing the age of the victim as 14 years, fixed the notional annual income at Rs.15,000/- reasoning that the claimant is a minor. The claimant, being a minor aged 14 years, cannot be a ground to fix the annual income at Rs.15,000/-. The notional income has to be commensurate with the criteria fixed by this Court as well as the Supreme Court in a catena of decisions. Further, the Tribunal should have considered the scope for employment, earnings and a reasonable salary cannot be ruled out that could be earned by the claimant in her future life. The Tribunal ought to have kept in mind the future prospective increase in income of the claimant as well.

8. It is to be noted that the Tribunal has awarded a sum of Rs.2,000/- towards medical expenses. The Tribunal has lost sight of the fact that the claimant has suffered amputation, for which she would definitely have undergone surgery and she would also be required to take medical treatment at a future date. The claimant would also be required to purchase calipers. Those aspects have not been taken into consideration by the Tribunal while awarding compensation.

9. Insofar as the compensation under the other heads are concerned, the Tribunal has awarded Rs.45,000/- towards marital prospects, Rs.3,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes and Rs.1,000/- towards transport charges. The above compensation awarded by the Tribunal reveals its total lack of understanding of the intensity of the sufferings of the claimant and the psychological impact of the accident on the mind of the claimant. The award under the above heads, are not only meagre, but in the context of the gravity of

the injuries, it could not even be termed to be a compensation, much less a reasonable compensation.

10. The case on hand reveals that the claimant suffered an amputation, that too at the tender age of 14. The mind set of the claimant has to be taken into account while awarding compensation. The actual requirement of the claimant, not only for her medical needs, but also for her future support in life needs to be taken into consideration while awarding compensation. The Tribunal has awarded a sum of Rs.3,000/- towards extra nourishment. Even a person, who suffers from general ailment, which comes on a regular basis, such a fever, cold, etc., spends more on nourishment once the ailment leaves the body. The claimant has undergone surgery and her leg has been amputated. Certainly she requires good nourishment to get back to normal. The award towards extra nourishment should be of such a nature that it brings back the health of the claimant to the state in which she was prior to the accident.

11. Insofar as the compensation of Rs.1,000/- towards transport expenses is concerned, it is to be pointed out that the claimant has suffered surgery, in which her leg has been amputated. The transport expense at Rs.1,000/- awarded by the Tribunal would not be adequate even for one trip to the hospital. Definitely the claimant would have been required to go the hospital for regular check ups. Therefore, adequate compensation needs to be awarded on this head.

12. Learned counsel for the appellant relied upon the Division Bench of this court in Managing Director, Tamil Nadu State Transport Corporation vs. Minor S.Surya. In the said case as well, the victim was a 14 year old girl, who suffered amputation of her right hand. The Division Bench, considering the gravity of the injuries and the impact it will have on the future of the person, awarded compensation in a sum of Rs.20,27,000/-. For better clarity, the break up of the compensation awarded is quoted hereinbelow :-

Loss of future earning	-	Rs.12,15,000/-
Pain and suffering	-	Rs. 2,00,000/-
Loss of amenities and attendant charges	-	Rs. 2,00,000/-
Loss of marriage prospects	-	Rs. 3,00,000/-
Medical Expenses	-	Rs. 30,000/-
transportation and other incidental expenses	-	Rs. 50,000/-
Extra nourishment	-	Rs. 30,000/-
Damages to articles	-	Rs. 2,000/-

Total	-	Rs.20,27,000/-

13. In the case on hand, the claimant is aged 14 years at the time of accident, who also suffered amputation of her leg. Not only for the surgery performed and other medical expenses related to the surgery and the hospitalisation, but also for purchase of artificial caliper, future medical expenses, adequate compensation needs to be awarded.

14. Considering the injuries suffered by the claimant, the surgery performed for removing the leg, the impact of the injury on the future life of the claimant and the period of treatment, this Court is of the considered view that the amount of compensation awarded by the Tribunal under all the heads require enhancement. This Court also considered the decision relied on by the learned counsel for the appellant in Surya's case (supra) and is of the considered view that a similar quantification in the present case as well would be just and reasonable compensation in the facts and circumstances of the case.

15. Accordingly, the award passed by the Tribunal is enhanced under the following heads and the compensation enhanced under each head is as under :-

Medical Expenses	-	Rs. 1,00,000/-
Loss of future earning	-	Rs.12,15,000/-
Artificial caliper	-	Rs. 3,00,000/-
loss of martial prospects	-	Rs. 2,00,000/-
transportation and other incidental expenses	-	Rs. 50,000/-
Extra nourishment	-	Rs. 30,000/-
Damages to clothes	-	Rs. 2,000/-
Pain and sufferings	-	Rs. 2,00,000/-
Total	-	Rs.20,97,000/-

16. For the reasons aforesaid, this Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.1,64,563/- to Rs.20,97,000/- with interest at 7.5% p.a. from the date of claim petition till date of deposit. The appellant shall pay necessary Court Fee on the enhanced compensation amount before receiving a copy of the judgment. No costs.

17. The 2nd respondent/Transport Corporation is directed to deposit the enhanced compensation amount of Rs.20,97,000/-, as ordered by this Court above, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, as the claimant would have attained majority by now, the

Tribunal shall transfer the award amount directly to the Bank Account of the appellant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Additional District Judge),
Fast Track Court No.II, Gobichettipalayam.

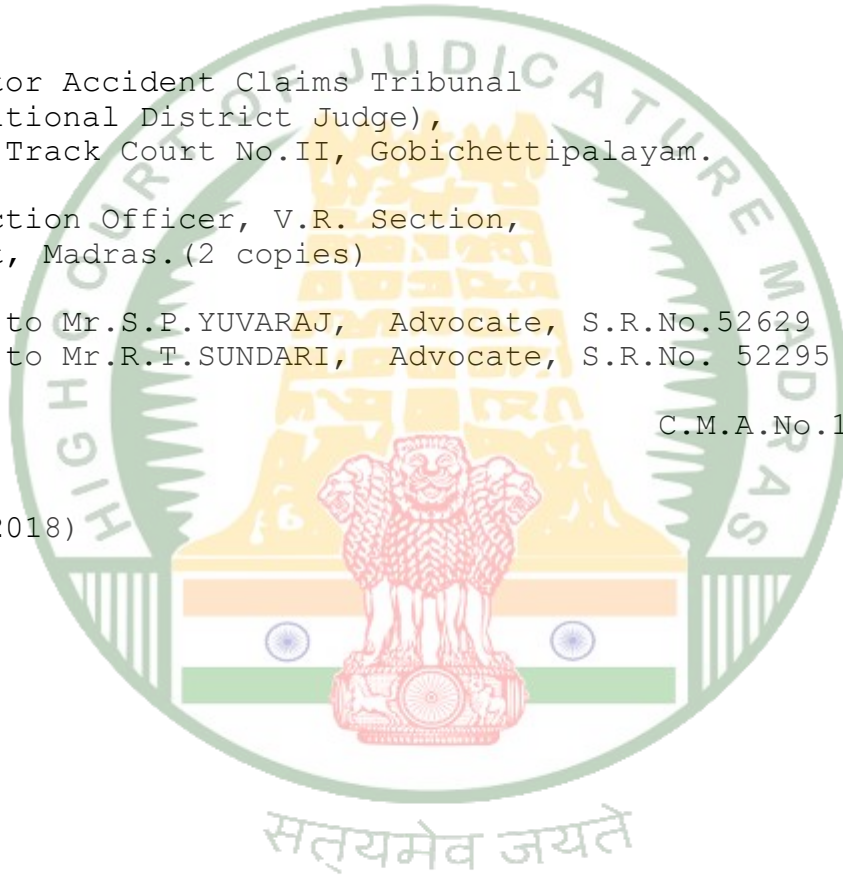
2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.P.YUVARAJ, Advocate, S.R.No.52629

+1cc to Mr.R.T.SUNDARI, Advocate, S.R.No. 52295

C.M.A.No.1505 of 2017

SJ(CO)
TR(23/04/2018)



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