

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.522 of 2016

Tamil Nadu State Transport Corporation
(Villupuram Division) Ltd.,
Represented by its Managing Director,
No.3/137 Salamedu, Vazhudha Reddy,
Villupuram District ... Appellant / Petitioner

..Vs..

Manikandan (Minor)
Represented by Mother and next friend Visalachi
... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2014 made in M.C.O.P No. 482 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr. K.J. Sivakumar
For Respondent : Mr. Terry Chellaraja

J U D G M E N T

Manikandan, a minor aged 15 at the time of filing of the petition in MCOP No.482 of 2011, represented by his mother, Visalachi, filed the claim petition, claiming compensation of Rs.6,00,000/-. The Tribunal awarded a sum of Rs.10,48,000/-.

2. The Tamil Nadu State Transport Corporation, challenging the award as excessive and disproportionate, has filed this appeal, mainly taking the plea that this is not a fit case to adopt multiplier method for the purpose of assessing the loss of earning capacity and that the Tribunal ought not to have taken the permanent disability at 75% which is on a higher side.

3. In order to appreciate this contention, it is necessary to find out the nature of injuries sustained and the impact of this disablement upon the earning capacity of the claimant.

4. The Tribunal has relied upon Ex.P-3 discharge summary issued by the Government General Hospital. The claimant has suffered Entraperitoneal rupture of the bladder and he has been treated as an inpatient initially for a period from 16.09.2006 to 09.10.2006 during which time surgery has been done, thereby supra-pubic exploration with SPC was done. Thereafter also, he has been an inpatient from 19.07.2007 to 23.07.2007 and thereafter, continued as outpatient. During those time, Urethral Stricture problem was diagnosed. Thereafter he was taken to Puducherry Government General Hospital, where from he was referred to higher institution for further management. Later, he was given treatment at Government Hospital, Madurai, where he was inpatient from 10.03.2008 to 04.04.2008, during which time, he underwent Orimmary end to end Anastomosis. Once again he was inpatient from 17.04.2008 to 26.04.2008 during which dilatation was done. Thereafter, he continued the treatment continuously as outpatient during which time dilatation was done and feeding tube correction has been done. Either Inpatient treatment or outpatient treatment have been the necessity for his sustainability.

5. Coming to the earnings of the claimant, though he was a student, it was alleged that he was doing milk vending and earning Rs.200/- per day. It is only the earning capacity and not the earnings which should be the criteria when the claimant is a student.

6. The Tribunal has fixed the monthly income at Rs.4,500/- on notional basis. Considering the prolonged treatment from the date of accident, namely, 15.09.2006 to 19.11.2009, for a period of more than three years, the Tribunal has chosen to award a sum of Rs.10,48,000/- as compensation under the following break up details:

Loss of income for 12 months (Rs.4,500 x 12)	-	Rs.	54,000/-
Extra nourishment, transportation and damage to clothes	-	Rs.	25,000/-
Attender charges	-	Rs.	10,000/-
Medical expenses	-	Rs.	5,000/-
Pain and suffering	-	Rs.	25,000/-
Disability of 75% at the rate of Rs.2,000/- per percentage	-	Rs.	1,50,000/-
Loss of earning capacity (Rs.4,500 x 12 x 18 x 75%)	-	Rs.	7,29,000/-
Loss of amenities	-	Rs.	50,000/-

Total	-	Rs.	10,48,000/-

7. The claimant has sustained fracture of hip bone. There has been rupture of urinary bladder leading to fixation of alternative urinary passage externally. It is alleged that there is no control over passing of urine. It is the claim of the injured that the passage had to be expanded at least for once in a month. The tube has to be changed twice in a month. The claimant has lost the chance of getting married, because of the urithiral injuries suffered.

8. The contention of the learned counsel for the appellant is that the percentage of functional disability fixed at 75% is high.

8.1. But, having regard to the nature of urinary problem, the loss of earning capacity should have been fixed at 100% and not at 75%, as the petitioner has a mere vegetative living.

9. The claimant was called upon to appear personally and the Doctor was also asked to assess the nature of disability, who would confirm that it would be a mere vegetative living for the injured. All along, the injured was carrying the urinary bag which would not make him feel comfortable to stand in front of others. The injured wanted audience in the chambers and later, he demonstrated how he would not be able to sit or sleep for a long time.

10. Under the stated circumstances the compensation already awarded under various heads have to be enhanced and restructured.

Loss of earning capacity (Rs.7,500/- (Rs.5,000/- + Rs.2,500) x 12 x 18 x 100%	-	Rs.16,20,000/-
Transportation	-	Rs. 1,00,000/-
Attendant charges	-	Rs. 1,00,000/-
Loss of expectation of life	-	Rs. 1,00,000/-
Pain and sufferings	-	Rs. 2,00,000/-
Loss of enjoyment of amenities-	Rs.	1,00,000/-
Loss of marital prospects	-	Rs. 1,50,000/-
Future medical expenses (Change of tube, rod insertion, etc.,)	-	Rs. 1,25,000/-
Medical Expenses	-	Rs. 5,000/-
Total	-	Rs.25,00,000/-

11. In this backdrop of things, this court is constrained to make some observations. If the Transport Corporation has towed the line of State Litigation Policy, as a responsible public sector undertaking, the Corporation would have abstained from filling this appeal as it is a case where the tribunal itself has awarded more than what is claimed by the petitioner. The Transport Corporation had the opportunity to see the pitiable condition in which the petitioner is placed on account of the injuries sustained in the accident. Reduction of pendency levels and liquidation of pending cases are concerns that would have deterred the Corporation from filing these appeals. The statistics of the institution, disposal and pendency of cases in the Indian Judiciary is a mute witness to the fact that State and instrumentalities of the State are the major litigant and their contribution to the docket explosion of the Court is considerable. Herein after, the State and Commercial undertakings functioning under the State authority shall think twice before launching a prosecution, preferring an appeal or defending some litigation for filthy and frivolous grounds that too after burning a big hole on the State exchequer, amounting to Pyrrhic victory. The Transport Corporation has not only lost the appeal, but also suffered the liability to pay more compensation.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The award is enhanced from Rs.10,48,000/- to Rs.25,00,000/-, which is payable by the Transport Corporation, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. The claimant was minor at the time of the accident. Now the claimant would have attained majority.

12.1. Hence, the Tribunal, on such deposit being made by the Transport Corporation, is directed to transfer the amount directly to the bank account of the claimant through RTGS transaction within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk/ogy

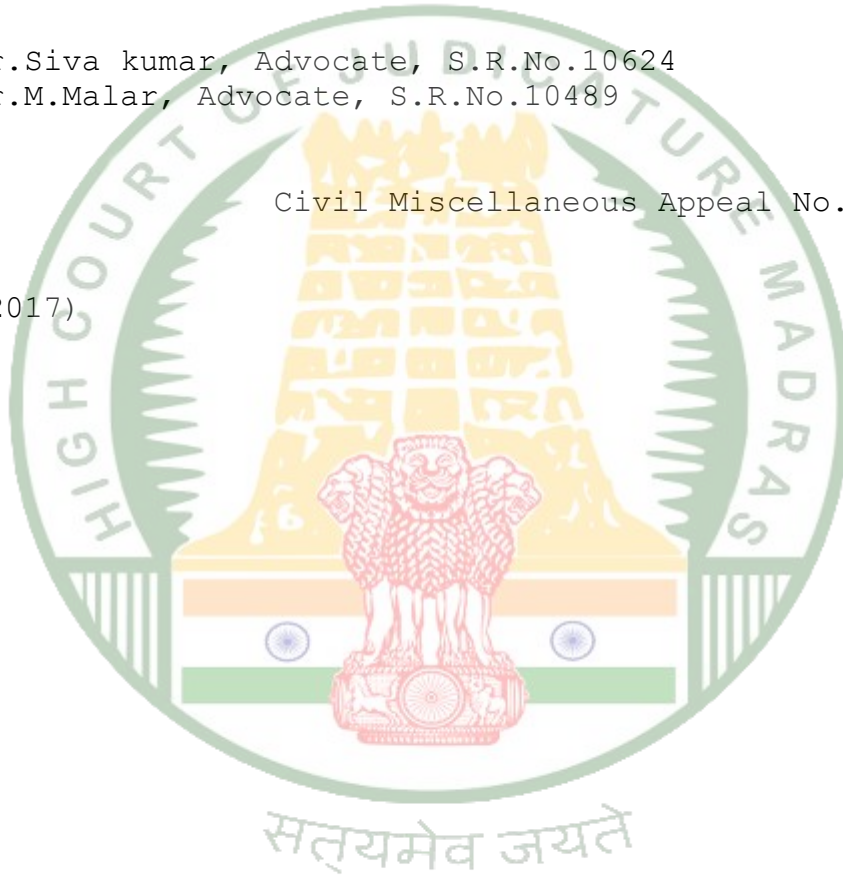
To

1. The Motor Accident Claims Tribunal,
Judge V, Court of Small Causes,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.Siva kumar, Advocate, S.R.No.10624
+1cc to Mr.M.Malar, Advocate, S.R.No.10489

Civil Miscellaneous Appeal No.522 of 2016

MP (CO)
RS (23/06/2017)



WEB COPY