

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.891 of 2017
and C.M.P.No.4355 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043. ... Appellant/2nd Respondent

versus

1. Minor Anusiya
Rep. by her father Periyasamy
guardian ...1st respondent/
Petitioner
2. K.Subramanian ...2nd Respondent/
1st respondent

Appeal filed under Section 173 of Motor Vehicles Act 1989,
against the Judgment and Decree dated 22.01.2015 made in
M.C.O.P.No.326 of 2012 on the file of the Motor Accident Claims
Tribunal (Additional District Judge), Erode at Bhavani.

For Appellant : M/s.R.T.Sundari
For R1 : Mr.C.Kulanthaivel
For R2 : No appearance

JUDGMENT

The claimant, Minor Anusiya, aged 8 years, a student, met
with an accident on 01.09.2012 in which she sustained grievous
injuries. The claimant, represented by her father filed a claim
petition in M.C.O.P.No.326 of 2012 on the file of the IV
Additional District Judge, Erode District, claiming compensation
of Rs.5,00,000/-.

2. The Tribunal, on considering the oral and documentary
evidence, has awarded a sum of Rs.3,66,173/- as compensation,
along with interest at the rate of 7.5% p.a. from the date of
petition till the date of deposit. Challenging the said award
as excessive, the Transport Corporation has filed this Civil
Miscellaneous Appeal.

3. The only challenge made by the Transport Corporation in the present appeal pertains to quantum of compensation.

4. The learned counsel appearing for the Transport Corporation submitted that the Doctor, who gave disability certificate, has not treated the injured and based on the disability certificate, the Tribunal has erred in awarding a sum of Rs.3,00,000/-; the Tribunal has erred in applying multiplier method, which is not in consonance with the decision rendered in 2005 ACJ 1483 (Velusamy's case) and the award of Rs.20,000/- towards pain and sufferings is on the higher side and the amount of Rs.24,000/- towards medical expenses without ascertaining the veracity of bills is also excessive. Hence, the award needs to be interfered with.

5. The learned counsel appearing for the first respondent/petitioner submitted that the compensation awarded by the Tribunal is justifiable and reasonable and, therefore, no interference is warranted with the award passed by the Tribunal and the award has to be confirmed.

6. In order to appreciate the contentions raised herein, it is necessary to look into the break-up details of the award passed by the Tribunal, which reads as follows:

Non-pecuniary damages for 25%	
Permanent disability	- Rs.3,00,000/-
Pain and sufferings	- Rs. 20,000/-
Medical Expenses	- Rs. 24,173/-
Extra nourishment	- Rs. 10,000/-
Transport Charges	- Rs. 10,000/-
Damage to clothing and articles	- Rs. 2,000/-

Total	- Rs.3,66,173/-

7. In the claim petition, it is claimed that the minor child has sustained fracture over the left shoulder, contusion over the head and lower and upper teeth were broken.

8. A perusal of the award passed by the Tribunal reveals that P.W.2-Dr.R.Krishnasamy has given the disability certificate (Ex.P9), assessing the disability of the injured at 35%. However, it is the contention of the appellant before the Tribunal that P.W.2 is not a dentist and, therefore, his assessment of disability for loss of teeth cannot be sustained. The Tribunal, taking into consideration the contention of the Transport Corporation and also keeping in mind the age of the minor injured, has held that the injuries suffered by the injured would heal as the age of the injured is very low and that reunion of bone and healing of the injuries would be much

more faster in the case of the injured, has fixed the disability at 25%. Even assuming that the Doctor has not treated the minor injured, one of the injuries in the claim petition pertains to fracture over the left shoulder, and definitely the said injury would disable the injured from using the left hand as usual and the injured would have got severe pain while moving the left hand. The impact of the injury on the injured in future life may not be of much significance, as the injured was aged 8 years and the said injury would get healed in due course. In such circumstances, the Tribunal has fixed the disability at 25%. The above finding rendered by the Tribunal cannot be found fault with and it is liable to be sustained.

9. Keeping in mind that the injured was a minor, reliance was placed on the decision of the Supreme Court in the case of Master Mallikarjun vs. Divisional Manager, National Insurance Co. Ltd. and another, reported in 2013 (2) TN MAC 338 (SC), wherein, it was held that the children having no income cannot be equated to non-earning person but notional income needs to be fixed for quantifying the compensation. The Supreme Court further held that compensation to the extent of Rs.1 lakh would be justifiable for disability within 10%, Rs.3 lakhs for disability above 10% to 30%, Rs.4 lakhs for disability above 30% to 60%, Rs.5 lakhs for disability above 60% to 90% and Rs.6 lakhs for disability above 90%. Following the ratio laid down in the above decision, the Tribunal has fixed the disablement compensation at Rs.3,00,000/- as the disability was 25%. In such circumstances, the contention of the learned counsel for the Transport Corporation that the Tribunal has erred in applying the multiplier method, is not correct, as the Tribunal has correctly followed the ratio laid down by the Supreme Court to quantify the compensation. Therefore, no interference is warranted with the compensation awarded for disability.

10. Insofar as the award towards medical expenses is concerned, the Tribunal has awarded a sum of Rs.24,173/-, based on the medical bills, Exs.P-8 and Ex.P-10. It is further evident from the order of the Tribunal that the Transport Corporation has not agitated the said issue before the Tribunal and, accordingly, the Tribunal has awarded compensation to the tune of Rs.24,172.72. The Transport Corporation having not agitated the issue with regard to the compensation towards medical bills before the Tribunal, it is not open to the Transport Corporation to come before this Court and claim that the order passed by the Tribunal awarding a sum of Rs.24,173/- towards medical bills without ascertaining the veracity of the said bills cannot be sustained.

11. Insofar as the compensation granted under the other heads are concerned, the Tribunal has awarded Rs.20,000/- towards pain and suffering, Rs.10,000/- towards extra

nourishment, Rs.10,000/- towards transportation, and Rs.2,000/- towards damage to clothing and articles. Considering the age of the injured and also considering the nature of disability, the compensation awarded under the above heads cannot be said to be excessive. Therefore, the compensation awarded under the above heads require no interference.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award dated 22.01.2015 made in M.C.O.P.No.326 of 2012 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Erode at Bhavani is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

13. The Transport Corporation is directed to deposit the entire award amount, 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 four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to deposit the award amount in an interest bearing deposit in any one of the Nationalized Banks till the claimant/injured attains majority. The guardian is permitted to withdraw the interest accruing on the deposit once in three months for the benefit of the claimant/injured.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Additional District Judge),
Erode at Bhavani.

Copy to

The Section officer
VR Section, High Court, Madras

C.M.A.No.891 of 2017

RJI (CO)
SP(27/04/2018)