

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.892 of 2017
and
C.M.P.No.4370 of 2017

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram ... Appellant/Respondent

vs.

Bharathi,S/o.Murugeson ... Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree in MCOP No.533 of 2003 dated 23.03.2016 on the file of Motor Accident Claims Tribunal, [II Additional District Judge], Chidambaram.

For Appellant : Mr.S.Sairaman

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 01.06.2001, a 4 1/2 year old child sustained grievous injuries. Though treated in Government Hospital, Chidambaram and then referred to RMMC Hospital, Annamalai Nagar, unfortunately, his right leg was amputated below knee. On his behalf claim was made by his father.

2. Tamil Nadu State Transport Corporation, Villupuram, though opposed the claim on various grounds, on evaluation of pleadings and evidence, Motor Accident Claims Tribunal, [II Additional District Judge], Chidambaram, held that the driver of the transport corporation bus bearing Regn.No.TN32N0368, was negligent in causing the accident. In so far as the disablement is concerned, PW2, Doctor, has deposed that the minor child sustained fracture and grievous injuries, in his right leg and that the same was amputated below knee. He assessed the extent of disablement as 80%. Supporting the oral testimony, respondent/claimant has filed Ex.P4 dated 01.06.2001, certified copy of wound certificate, Ex.P5, Discharge summary of RMMC

Hospital, Chidambaram, Ex.P6 dated 01.03.2013, treatment certificate, Ex.P8, requisition for hospital charges, Ex.P9, medical prescriptions, Ex.P10, Blood Bank requisition form, Exs.P12 & P17, Photographs, Ex.P13, Disability certificate issued by the Government Hospital, Exs.P14 and P16, x-rays and Ex.P15 dated 09.03.2015, disability certificate. Going through the oral and documentary evidence, the claims tribunal held that the respondent/claimant suffered functional disability at 80%.

3. Applying the decision of the Hon'ble Supreme Court in the Oriental Insurance Company Limited Vs. Thiru.Raja and another, reported in 2015 (2) TNMAC 301, the tribunal applied structural formula for the purpose of computing loss of future earning. The tribunal has also considered a case, Minor Tamilmeena @ Meena rep. by guardian and next friend/father Veeramuthu Vs. Tamilnadu State Transport Corporation Ltd., (Division-I), Villupuram, wherein at paragraph Nos.6 & 7, the Court held as follows.

"6. The Claimant was 10 years old at the time of accident, who was playing with her friend. As rightly referred by Mr.E.C.Ramesh, learned counsel appearing for the Appellant, the Hon'ble Supreme Court in V.Mekala V.M. Malathi & anr., 2014(2) TNMAC 6(SC) (on 25 April, 2014) determined the Notional Income of a 16 years old student who was studying plus one as Rs.10,000/- per month added 50% towards Future Prospects determining the monthly income at Rs.15,000/- per month. Considering the fracture in both the legs of the victim in that case, the Hon'ble Supreme Court determined the monthly income at Rs.15,000/- including Future Prospects.

7. Following the abovesaid judgment, this Court determines the monthly income of the claimant at Rs.8,000/- instead of Rs.10,000/- as determined by the Hon'ble Supreme Court and added 50% towards Future Prospects, the monthly income is arrived as Rs.6,000/-. the appropriated Multiplier according to the age of the Claimant is 16 and the Loss of income is derived as follows:

$$\text{Rs.6,000/-} \times 12 \times 16 \times 30/100 = \text{Rs.3,45,600/-}."$$

4. Fixing notional income of Rs.6,000/- and by applying '16' multiplier, for the extent of disability viz. 80%, the tribunal computed the loss of future earning as Rs.9,21,600/- ($\text{Rs.6,000/-} \times 12 \times 16 \times 80/100$) and in all, awarded a sum of Rs.11,59,600/-, as compensation, which is apportioned as hereunder.

Loss of earning power	: Rs.	9,21,600/-
Pain and sufferings	: Rs.	50,000/-
Loss of amenities	: Rs.	50,000/-
Future prospects	: Rs.	50,000/-
Medical Expenses	: Rs.	10,000/-

Extra Nourishment	: Rs.	5,000/-
Attender Charges	: Rs.	18,000/-
Ambulance	: Rs.	5,000/-
Total	: Rs.	11,59,600/-

5. On the facts and circumstances of this case, we are of the view that the quantum of compensation awarded under various heads, is less. Respondent/claimant is entitled to higher compensation. While, sustaining the award, we are of the view that it is open to the respondents/claimants to seek for enhancement, if so advised.

6. In view of the above discussion, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

7. Consequent to the dismissal of the appeal, the appellant-Tamilnadu State Transport Corporation, Villupuram, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim and costs, of this appeal, to the credit of MCOP No.533 of 2003 on the file of Motor Accident Claims Tribunal, [II Additional District Judge], Chidambaram, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the award amount with proportionate interest and costs, by making necessary applications.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal,
[II Additional District Judge], Chidambaram.

+1cc to Mr.S.Sairamen,Advocate sr.15216

C.M.A.No.892 of 2017

and

C.M.P.No.4370 of 2017

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ss(11/4/2017)