

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1101 of 2017

and

C.M.P.No.5459 of 2017

The Managing Director,  
Tamil Nadu State Transport Corporation  
Railway Station Road,  
Kumbakonam Town and Munsif. .... Appellant / Respondent

versus

Minor Atchaya, D/o. Balachandran,  
(Minor is represented by her  
next friend and  
father Balachandran) .... Respondent / Claimant

Prayer : This appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree dated 02.12.2015, made in M.C.O.P.No.118 of 2012 on the file of the Motor Accident Claims Tribunal, Mannarkudi.

For Appellant: Mr.D.Venkatachalam

JUDGMENT

Minor Atchaya represented by her father Balachandran, the claim petitioner, filed a petition in M.C.O.P.No.118 of 2012 before the Motor Accident Claims Tribunal, Mannarkudi, claiming a sum of Rs.5,00,000/- as compensation, in respect of the injury sustained by her in the accident on 01.08.2011.

1.1. The minor, aged 12 years, was a student at the time of accident. In respect of the injury sustained, she has been initially admitted at Mannargudi Hospital; thereafter, from 01.08.2011 to 09.08.2011 at Thanjavur Medical College and Hospital; from 10.08.2011 to 17.09.2011 at SMCH, Chennai; from 11.06.2012 to 19.06.2012 and also on 04.10.2011 and 09.11.2011 at Thanjavur Medical College and Hospital as in-patient. The disability has been fixed at 79%.

2. The contention of the claimant is that the entire future medical expenses as well as future marital life got affected and what is remaining for her, she is only a vegetative living.

3. A perusal of the award would go to show that there are disfigurement in both the legs and because of consequences of the injury, she cannot have marital life at all.

3.1. The Doctor has stated that the minor has suffered fracture of bones in the left thigh as well as in the right ankle (in the right leg) and there had been bending of both the legs resulting in shortening of leg to the extent of 2 cms in the left leg. It is evident that the claimant cannot play like other children and sitting on cross leg would also be difficult. During surgery, implant has been used and k-wire has been fixed.

4. Relying upon the decision reported in 2015 (2) TNMAC 301 (Minor Tamizhmeena @ Meena rep. by guardian, next friend / father veeramuthu vs. TNSCTC Ltd., (Division-I), Villupuram, the Tribunal has taken the percentage of disability at 100%, after seeing the claimant personally and after giving a finding that the assistance of parents are required for the claimant even to walk. Based upon the judgment, the Tribunal has taken the future earnings of the injured at Rs.5,000/- and adopting 50% increase towards future prospective increase in income and adopting multiplier of '15', in respect of 79% disability, the loss of earning capacity has been awarded at Rs.10,66,500/-; loss of amenities has been awarded at Rs.50,000/-; loss of marital prospects has been awarded at Rs.75,000/-; pain and suffering has been awarded at Rs.75,000/-; medical expenses has been awarded as per the bills at Rs.13,216/-; extra nourishment has been awarded at Rs.20,000/-; transport charge has been awarded at Rs.10,000/-; cost of attendant has been awarded at Rs.20,000/-; the total compensation has been quantified at Rs.13,29,716/-.

4.1. Relying upon the decision in the case of Nagappa vs. Gurudayal Singh, reported in 2003 ACJ 12 (SC) and Pooja vs. Indore Municipal Corporation and others, reported in 2010 ACJ 2507, the Tribunal has also given a finding that the claimant has been awarded a sum of Rs.13,29,716/-, which is more than the amount claimed.

4.2. A perusal of the award would go to show that each and every aspect of the case has been meticulously considered by the claims Tribunal, based on the settled legal principles of law. Even though the percentage of disability is 100%, loss of earning capacity has been taken at 79% only.

4.3. Even assuming that the award under loss of earning capacity is slightly excessive, the award under other heads, i.e. loss of martial prospects, loss of enjoyment of amenities, medical expenses are less, the overall quantum of compensation is found reasonable. Therefore, there are no grounds to interfere with the quantum of compensation.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 02.12.2015, passed in M.C.O.P.No.118 of 2012 by the Motor Accident Claims Tribunal, Mannarkudi.

6. The Transport Corporation shall deposit the entire amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within six weeks from the date of receipt of a copy of this Judgment. The minor claimant would have attained major as on date. Hence, the Tribunal shall permit the claimant to withdraw the amount on production of necessary documents and application for permission. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,  
Mannarkudi.

C.M.A.No.1101 of 2017

KGK (CO)  
EU (21/12/2017)



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