



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1715 of 2017

and C.M.P.No.9295 of 2017

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The Managing Director,
Tamil Nadu State Transport
Corporation,
Bharathipuram,
Salem Main Road, Dharmapuri.

... Appellant / Respondent

versus

Manikandan

... Respondent/Petitioner

Prayer : The appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 05.08.2013 made in M.C.O.P.No.608 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

In respect of the accident which took place on 17.06.2001, the claim petition for compensation has been filed only in the year 2011 in M.C.O.P.No.608 of 2011 by the injured claimant Manikandan.

2. Manikandan was aged 10 years and was a student studying 3rd standard at the time of accident. He was a pillion rider in TVS 50 Moped bearing Reg.No.TB29 B 1921. According to the guardian, the injured was given treatment as inpatient at Government Hospital, Dharmapuri from 17.06.2001 to 01.08.2001, thereafter, from 01.08.2001 to 16.08.2001 as inpatient at St.John Medical college Hospital, Bangalore. Thereafter, he was given private treatment. It is stated that the injured suffered fracture in the left femur. The doctor has assessed the disability at 40%. Considering the age of the claimant, the Tribunal has fixed the disability at 20% on the ground that the injury would healed faster as the claimant was of young age. Adopting multiplier method and fixing the notional income at Rs.3,000/- p.m. loss of income has been quantified in respect of 20% disability at Rs.1,29,600 (Rs.3,000 x 12 x 18 x 20%). The Tribunal has awarded a sum of Rs.5,000/- towards travelling expenses, Rs.10,000/- towards pain and sufferings, Rs.5,000/- toward extra nourishment, Rs.59172/- (as per Ex.P5) towards medical expenses, in all totalling to a sum of Rs.2,08,772/-.

3. Insofar as negligence is concerned, there is a finding that the accident took place only on account of rash and negligent driving of both moped as well as the driver of the Tamil Nadu State Transport Corporation Bus. Therefore, both of them have been made equally responsible and accordingly, the Transport Corporation has been directed to pay only 50% of the award amount.



4. Contending that the liability to pay compensation should be totally fastened on the owner and the insurer of the moped and not against the Transport Corporation and questioning the multiplier method adopted to arrive at the loss of earning capacity, the Transport Corporation has filed this appeal.

5. Even according to the First Information Report, the accident had taken place on account of collision between the TVS 50 Moped and the bus belonging to the Transport Corporation. Admittedly, four persons travelled in the TVS 50 Moped. The Tribunal has given a finding that when four persons travelled in the TVS 50 Moped, definitely, there is all possibility of the vehicle going out of control and, therefore, the contribution of the Moped in the resultant accident cannot be ruled out.

6. Considering the evidence of the driver and considering the totality of the circumstances, the Tribunal has given a finding that the accident had happened due to the rash and negligent driving of both the vehicles.

7. Even if the contention of the Transport Corporation is that the accident had happened only due to the negligence on the part of the driver of the Moped, the Corporation should have taken steps to implead the driver of the Moped as a person responsible for the accident and should have examined him. However, no steps have been taken in this regard. It is not the case of the claimant that the driver of the moped was not responsible for the accident. In the absence of any material supporting the contention of the Transport Corporation it cannot be said that the Transport Corporation is not to be held liable for the accident. Further, the evidence available on record only confirms the view taken by the Tribunal that the accident has happened due to the fault of both the bus as well as the driver of the moped and, therefore, responsibility to the extent of 50% fixed on both the bus and the owner of the moped by the Tribunal cannot be said to be erroneous.

8. Coming to the contention that the multiplier method ought not to have been adopted, the learned counsel for the appellant is right in his contention. Having regard to the young age of the claimant, viz., 10 years, the Tribunal should have awarded disablement compensation and ought not have multiplier method for quantification of compensation. Considering the disability at 40%, the disablement compensation at the rate of Rs.1,500/- per percentage of disability, would be just and reasonable compensation. Accordingly, this Court awards disablement compensation in a sum of Rs.60,000/- (Rs.1500 X 40%). It is to be pointed out that no amount has been awarded towards loss of enjoyment of amenities. The claimant, who is aged only around 10 years, has suffered injuries in the accident and definitely, he would be deprived of the happiness that would normally be available to young children. In that view of the matter, this Court deems it fit to award a sum of Rs.40,000/- under the head loss of amenities.



9. Considering the nature of injuries suffered by the claimant and period of treatment, the compensation awarded under the head pain and sufferings and transport expenses are on the lower side. This Court is of the opinion that an additional sum of Rs.20,000/- towards pain and sufferings and Rs.9,600/- towards transport expenses over and above what has been awarded by the Tribunal would be a just and reasonable compensation. Accordingly, this Court modifies the award passed by the Tribunal and restructures the award under the following heads :-

Loss of income	-	Rs. 60,000/-
Transport expenses	-	Rs. 14,600/-
Pain and suffering	-	Rs. 30,000/-
Loss of enjoyment of amenities	-	Rs. 40,000/-
Extra nourishment	-	Rs. 5,000/-
Medical Bills	-	Rs. 59,172/-

Total	-	Rs.2,08,772/-

10. Accordingly, the Civil Miscellaneous Appeal is dismissed, however, confirming the award dated 05.08.2013 made in M.C.O.P.No.608 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri. Consequently, connected miscellaneous petition is closed.

11. The Transport Corporation is directed to deposit the compensation as awarded by this Court, towards 50% of the liability, i.e. Rs.1,04,386/-, less the amount if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of 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 shall transfer the same directly to the Bank Account of the claimant through RTGS, within a period of two weeks thereafter. Insofar as the balance amount of compensation is concerned, the claimant is at liberty to recover the same from the owner/insurer of the moped in accordance with law.

ogy/GLN

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

1. The Motor Accident Claims Tribunal,
Additional District Judge,
Dharmapuri.

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sm:12.4.2018

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