

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2134 of 2017

and

C.M.P. No.11335 of 2017

Tamil Nadu State Transport Corporation,
represented by its Managing Director,
Dharmapuri.

... Appellant

Versus

Minor Vanitha
Represented by father / Next Friend P.Sundararaj

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.10.2003 made in M.C.O.P. No.821 of 2002 on the file of Motor Accidents Claims Tribunal (Sub Judge), Krishnagiri.

For Appellant : M/s.R.Arunmozhi

JUDGMENT

Challenging the quantum of compensation, the Transport Corporation has filed this appeal.

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2. Minor Vanitha, an infant, aged about 3½ years, represented by her father / next friend P.Sundararaj, who was studying L.K.G., in Anna English Medium School, Kuppam Road, Krishnagiri, met with an accident

on 06.10.2001. The father claimed compensation of Rs.4,00,000/-. The Tribunal awarded a sum of Rs.2,82,997/-. Even though the accident is of the year 2001 (06.10.2001), still the claimants are not served and the application to condone the delay of 46 days was considered along with the merits of the matter. Considering the facts stated in the affidavit, the delay of 46 days in filing the appeal is condoned without notice.(As there is no scope of allowing the appeal and no prejudice would be caused to the respondent).

3. The claimant minor has suffered fracture on right thigh bone. She has been initially treated at Government Hospital at Krishnagiri and later at St.Johns Hospital, Bangalore.

4. According to the evidence of the claimant's father, a sum of Rs.45,000/- towards medical expenses have been claimed, but the Tribunal on consideration of the materials placed, has awarded a sum of Rs.29,397/- towards medical expenses. The Doctor has noted three injuries, out of which, the first injury is grievous injury. Injuries 2 and 3 have been described as simple injuries. The fracture has been treated and thereafter there had been plastic surgery. According to the Doctor, there is restriction in the movement of the right hip and consequently there

is disability; difficulty while sitting in cross legs and standing for long hours, as described by the Doctor. The Doctor has certified the disability at 30%.

5. Further Rs.3,600/- has been awarded as taxi charges. The Tribunal has not itemised the award that need to be given under each and every head.

6. The Hon'ble Supreme Court in several cases, has pointed out that the itemisation is essential in order to avoid injustice to the claimants / Transport Corporation / Insurance Company. The Tribunal has simply awarded compensation on account of the future loss, and mental harassment and loss to parents at Rs.2,50,000/-. Awarding Rs.29,397/- towards medical expenses and Rs.3,600/- towards transport charges, the total award is calculated at Rs.2,82,997/- This amount should have been bifurcated into all the relevant heads like pain and sufferings, loss of expectation of life and loss of enjoyment of amenities, loss of income, loss of earning capacity etc.

7. The Hon'ble Supreme Court in the case of CIVIL APPEAL NO. 896 OF 2014 (Arising out of SLP(C) NO. 21303 OF 2013) Sanjay Kumar vs Ashok Kumar & Anr on 24 January, 2014

has highlighted the items to be considered in case of injuries sustained by the claimant and incidentally as referred the decision in the case of Rajkumar V. Ajay Kumar and the relevant observation reads as under :

“In the case of *Raj Kumar v. Ajay Kumar & Anr.*[3], this Court has succinctly explained the guidelines and heads for awarding compensation in cases of disability due to a motor accident. The relevant paragraphs are extracted below:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury,

where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and

(vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item(iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant”.

8. These aspects have not been touched at all by the Tribunal.

Therefore, the amount of Rs.2,82,997/- awarded has to be given under the following break up, the details of which reads as under :-

Pain and sufferings	:Rs.52,997/-
Disablement compensation	:Rs.30,000/-
Transport	: Rs.10,000/-
Extra nourishment	: Rs.30,000/-
Future medical expenses	:Rs.60,000/-
Loss of enjoyment of amenities	: Rs.75,000/-
Cost of attendant charges	:Rs.25,000/-

Total	: Rs.2,82,997/-

9. The award of the Tribunal is confirmed and in the result, the appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

10. The appellant /Transport Corporation is directed to deposit the entire award amount along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any before the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimant minor should have attained majority by now. Necessary application has to be taken out to declare the minor as major. The Tribunal shall pass necessary orders on the application. Thereafter, (On such deposit being made) the Tribunal is directed to transfer the award amount directly to the bank account of the claimant, through RTGS within a period of two weeks thereafter.

10.07.2017

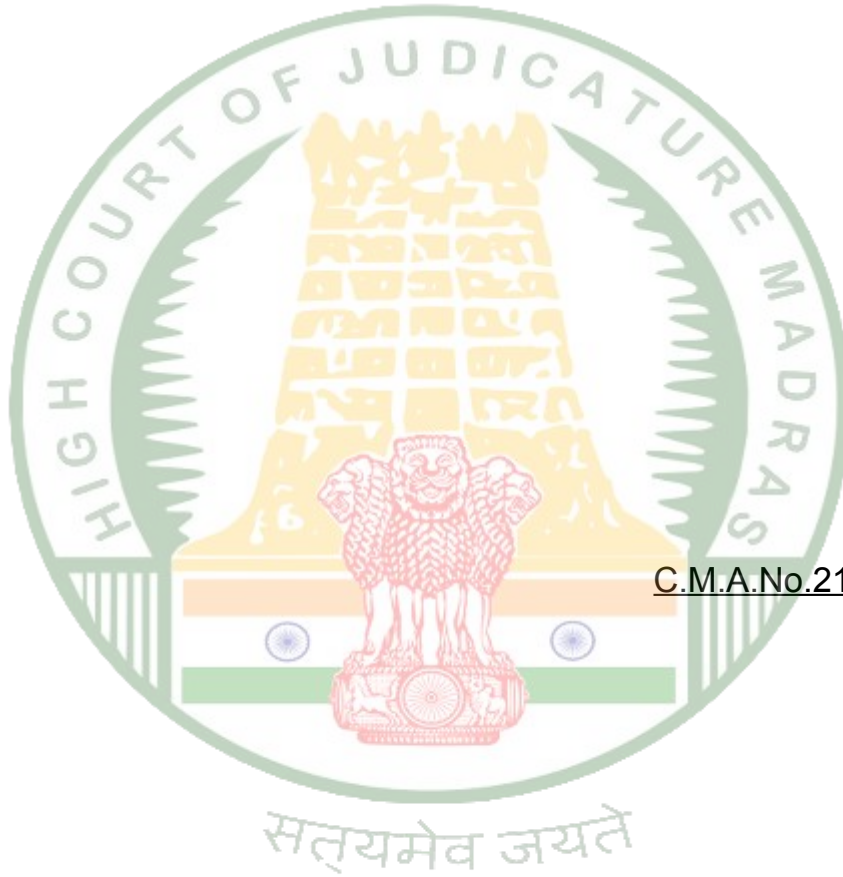
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To
1.The Motor Accident Claims Tribunal,
Cuddalore (Special Sub Court to deal with MCOP Cases, Cuddalore)

Dr.S.VIMALA, J.

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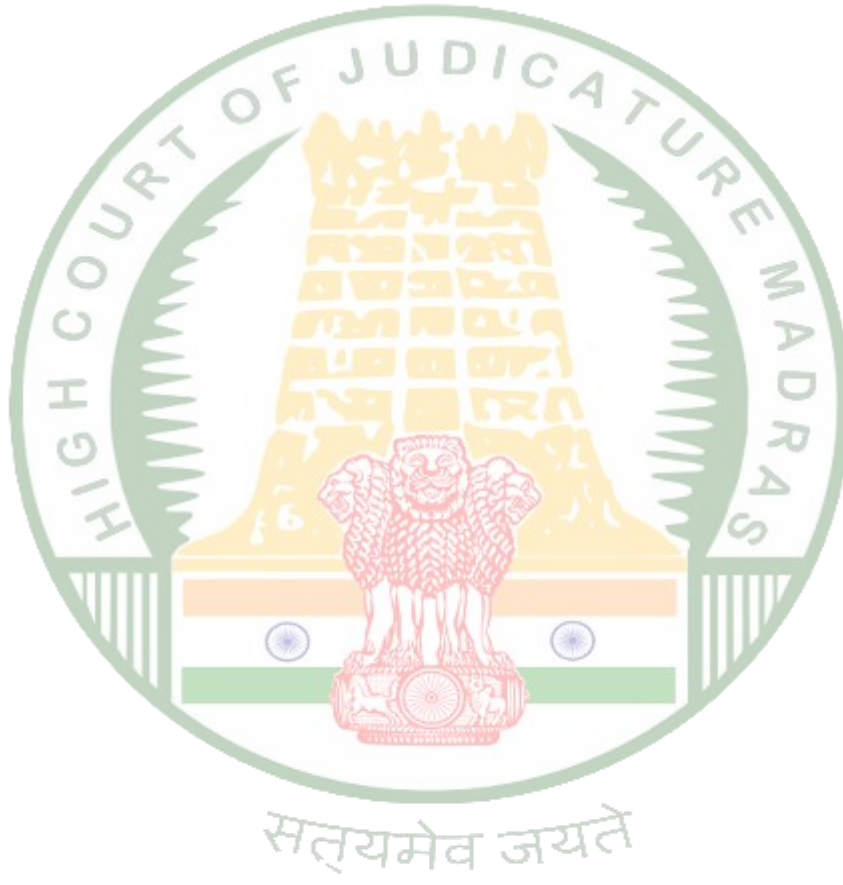
2. The Section Officer,
V.R. Section,
High Court, Madras – 104.



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