

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3743 of 2008

Jeganathan

...Appellant/ Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division - 1,
Villupuram.

...Respondent/ Respondent

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 to modify the Order and Judgment dated 05.01.2008 in M.C.O.P.No.365 of 2004 on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Thiruvannamalai and allow this appeal.

For Appellant : Ms.M.Malar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 05.01.2008 passed by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Tiruvannamalai in M.C.O.P.No.365 of 2004.

2. The brief facts leading to the filing of the instant appeal are as follows:

The appellant sustained injuries when he was a minor aged 14 years on 14.01.2003, as a result of the accident caused by a bus bearing Registration No.TN 32 N 1540 owned by the Respondent / Transport Corporation. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.365 of 2004 seeking compensation of Rs.1,00,000/- The Motor Accident Claims Tribunal by its award dated 05.01.2008 in M.C.O.P.No.365 of 2004 directed the respondent to pay the appellant a sum of Rs.25,000/- together with interest at 7.5% per annum from the date of claim till the date of realisation. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Ms.Malar, learned counsel for the appellant and Mr.K.J.Sivakumar, learned counsel for the respondent.

4. According to the learned counsel for the appellant, the appellant sustained grievous injuries. The appellant was a minor at the time of the accident and he sustained right temporal contusion and brain swelling injuries. She drew the attention of this Court to the Discharge Summary given by CMC Hospital, Vellore and submitted that the injuries sustained by the appellant are grievous injuries.

5. The learned counsel for the appellant further submitted that due to the injuries sustained by the appellant, he was hospitalised for two days, between 15.01.2003 and 17.01.2003, as per Ex.P.3. According to her, under the impugned award, the Tribunal has not considered Ex.P.3 while assessing damages payable to the appellant. According to her, the Tribunal, instead, has awarded a lump sum compensation of meagre amount of Rs.25,000/- towards future damages, pain and sufferings, mental agony and medical expenses. According to her, even though the Doctor has assessed the disability of the appellant at 20% and the same is marked as Ex.P.5, the Tribunal under the impugned award has not considered the same while assessing the compensation payable to the appellant towards disability. According to her, the compensation awarded by the Tribunal under the impugned award is an inadequate compensation and it has to be enhanced by this Court.

6. Per contra, the learned counsel for the respondent / Transport Corporation would submit that the compensation awarded by the Tribunal under the impugned award is a just compensation. According to him, the injuries sustained by the Appellant is only a simply injury and further, the accident having been taken place in 2003 and the appellant being a minor, the compensation awarded by the Tribunal under the impugned award is a just compensation.

7. This Court having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:-

(i) The nature of injuries, as per Ex.P.3, Wound Certificate / Discharge summary sustained by the appellant, as a result of the accident has not been disputed by the respondent before the Tribunal.

(ii) As seen from the injuries, the appellant has sustained right temporal contusion and brain swelling, as seen from Ex.P.3 and the Doctor, who has examined the

appellant has also stated in the said certificate that the injury sustained by the appellant is a grievous injury. The disability certificate, Ex.P.5 was also produced before Tribunal by the Appellant and the Doctor has assessed the disability of the appellant, as a result of the injury at 20%. As seen from the impugned award, the Tribunal has not considered Ex.P.3 [Wound Certificate and discharge summary] and Ex.P.5 [Disability Certificate] while assessing the compensation payable to the appellant. In the considered view of this Court, the respondent having not disputed the nature of injuries sustained by the appellant, the Tribunal ought to have awarded a higher compensation by assessing the same under various conventional heads instead of awarding a lump sum compensation of Rs.25,000/- to the appellant.

(iii) The disability suffered by the appellant is assessed at 20%, the compensation awarded to the appellant by the Tribunal towards disability is Rs.20,000/-. But the Tribunal has not adequately compensated towards pain and suffering and transportation cost.

8. In view of the above finding by this Court, a compensation of Rs.10,000/- is awarded to the appellant towards Pain and Suffering and Transportation cost. In all, a total compensation of Rs.35,000/- is awarded to the appellant instead of Rs.25,000/- awarded by the Tribunal.

9. In the light of the above observations, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.25,000/- to Rs.35,000/- and the respondent is directed to deposit the entire amount together with interest at 7.5% per annum from the date of claim till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The respondent is directed to deposit the enhanced compensation awarded by this Court, along with accrued interest thereon to the credit of M.C.O.P.No.365 of 2004, after adjusting the amount, if any, already deposited and on such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application before the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/--

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Thiruvannamalai

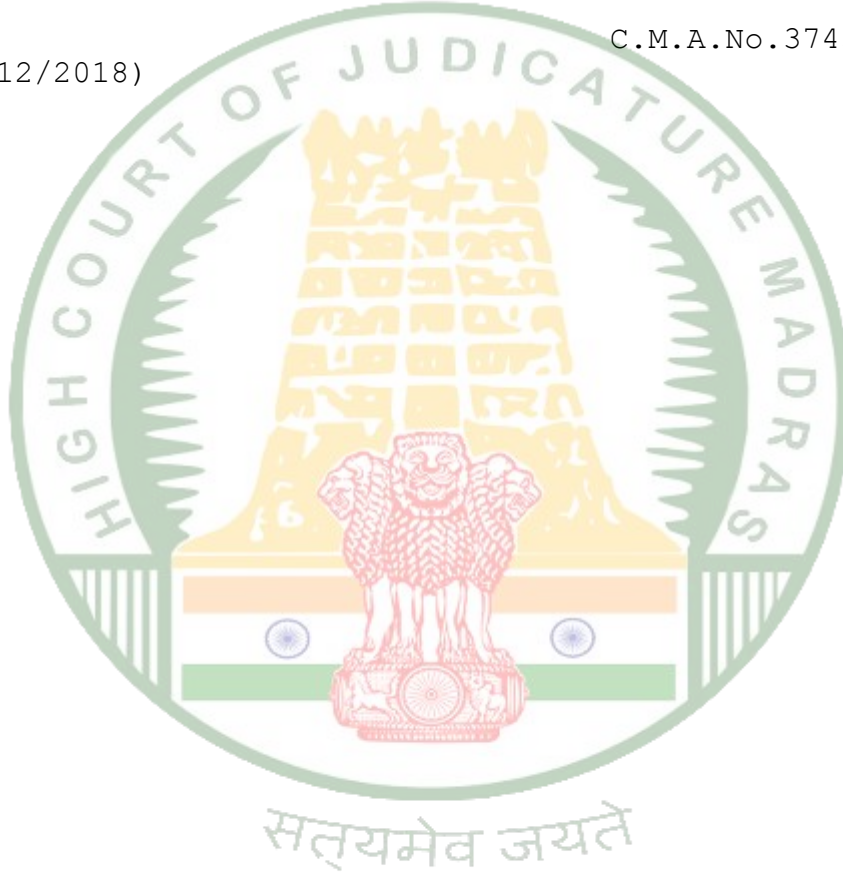
2. The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr. K.J.Sivakumar, Advocate SR.No. 73674

+1cc to Ms.M.Malar , Advocate SR.No. 73538

C.M.A.No.3743 of 2008

ASK(19/12/2018)



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