

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1595 of 2018

Thirunavukkarasu

..Appellant/Petitioner

-Vs-

1.Manivannan

2.Managing Director, Tamil Nadu State
Transport Corporation (Salem Division-1 Limited)
No.12, Ramakrishna Road, Salem-7 ..Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award and decree dated 19.06.2013 made in M.C.O.P.No.825 of 2008 on the file of Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

For appellant : : Mr.C.Kulanthaivel
For Respondents : : Mr.D.Venkatachalam for R2.
R1- Notice dispensed with.

J U D G M E N T

By consent of both sides counsel, this Civil Miscellaneous Appeal filed by the Appellant/Claimant is taken up for final disposal at the admission stage itself. The Appellant is the Claimant/Petitioner, has filed this appeal challenging the order and decree dated 19.06.2013 made in M.C.O.P.No.825 of 2008 on the file of Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the petitioner is that on 17.10.2008 at about 8.10 a.m., while the petitioner, who was minor at the time of filing M.C.O.P. was represented by his next friend/mother Indirani, was getting into the 2nd respondent bus bearing Reg.No.TN-27-N-1325 at Vellaranaikkanpalayam bus stop in Edappadi to Jalakandapuram Road, the 1st respondent driver of the said bus, even before the minor petitioner get into the bus, suddenly moved the bus which resulted in the minor petitioner falling down from the bus. As he fell down, the minor petitioner

suffered fracture in toe and multiple injuries all over the body. The minor petitioner took treatment in G.H., Edappadi and thereafter at Government Hospital, Salem, as inpatient from 17.10.2008 to 28.10.2008. The Petitioner incurred expenses Rs.50,000/- for hospital, transportation and other expenses. At the time of the accident, the minor petitioner was studying 7th standard. Due to injuries, he suffered in the accident, he continued to have head ache and chest pain. According to the petitioner, he is unable to study properly due to the injuries he suffered in the accident. Due to the severe injuries in the right hand, the petitioner is unable to take part in sports activities along with his classmate. The Petitioner was only 13 years when the accident took place. His future career is affected due to the accident took place. Hence, the petitioner seeks a sum of Rs.6,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent transport corporation contends that the accident does not occur in the manner alleged by the Petitioner. The respondent bus driver is no way responsible for the occurrence. While the respondent bus was proceeding from Edappadi to Jalakandapuram, after the passengers alighted at Vellarnaiken bus stop and after the conductor gave signal only, the 1st respondent driver slowly moved the bus. At that point of time, a person came running and tried to get into the bus from the rear side entrance. While doing so, the said person lost grip, fell down, suffered injuries. Only after passengers started shouting, the 1st respondent driver came to know about that. As such, the 1st respondent is no way responsible for the accident. The negligence of the petitioner alone caused the accident. There is no need for the respondent to pay the compensation. Thus, the respondent seeks dismissal of the Petition.

4. Before the Tribunal, on behalf of the Petitioner, Petitioner's mother was examined as P.W.1 and the medical expert was examined as P.W.2, while documents Ex.P.1 to Ex.P.10 were produced to prove his claim. The respondent examined R.W.1 and produced Ex.R.1 to counter the claim of the petitioner. The Tribunal after analysing the evidence on record found negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.90,200/- payable by the respondents to the minor petitioner.

5. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. Heard both sides.

7. The learned counsel for the appellant/petitioner submits that the petitioner has now become major. He further submits that the Tribunal failed to consider the evidence of P.W.2 doctor properly. The medical expert fixed the permanent disability suffered by the petitioner at 25% and the same is appropriate. The petitioner has to be compensated for the disability and also loss of amenities. The amount awarded by the Tribunal is very meagre. Thus, the petitioner/claimant seeks for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/transport corporation contends that the accident occurred only due to negligence of the petitioner. As such, the tribunal is not justified in passing an award for a sum of Rs.90,200/- against the respondents. Further, the award passed by the Tribunal itself is highly excessive. There is no need for any enhancement. Thus, the 2nd respondent seeks dismissal of the appeal.

9. The Tribunal on the basis of eyewitness account given by P.W.1, the contents of Ex.P.1-FIR and Ex.P.4-Final report filed against the first respondent driver concluded that the negligence of the first respondent alone caused the accident. Even though the same was disputed before the tribunal by the 2nd respondent/transport corporation by examining their official as RW1 and by producing Exhibit R.1/Judgment copy of Judicial Magistrate No 2, Sankagiri, wherein first respondent was acquitted in the criminal case relating to the accident, the tribunal, analysing the evidence on record held that negligence of the first respondent driver alone caused the accident. The 2nd respondent has not preferred any appeal against the award passed by the Tribunal. As such the conclusion of negligence cannot be agitated in the appeal filed by the claimant and the conclusion of the tribunal regarding negligence and liability has become final.

10. The only issue to be considered is quantum of appeal. The petitioner who got injured was 13 years old at the time of the accident. Admittedly he was student. It is evident from Ex.P.2 Accident Register copy as well as Ex.P.7 Discharge Summary that the petitioner suffered multiple grievous injuries and underwent treatment as inpatient. It is also clear from the evidence of PW2 doctor who examined the petitioner physically

and also analysed EX.P.10 X-ray concluded that the petitioner suffered 25% permanent disability. In the absence of any contra evidence on the side of the respondents to disprove or discredit the assessment of PW2 doctor, the tribunal considering the admission of PW2 that 3% disability was added on the ground of his pain and suffering, assessed the disability of the petitioner at 22%. The same appears to be appropriate .

11. Admittedly the petitioner was studying 10th standard at that point of time. Due to the fracture suffered in his right leg, he is unable to walk for long distance and find difficulty in climbing staircase. As such he suffered partial permanent disability. The tribunal calculated the damages for the disability at the rate of Rs.2000/- per percentage and provided Rs.44,000/- [Rs.2000x 22] for disability.

12. Pointing it out, the learned counsel for the petitioner/claimant relying upon the Apex court ruling reported in 2013 (2) TN MAC 338 (SC) [Master Mallikarjun Vs. Divisional Manager, National Insurance Co.Ltd., and another], contends that the petitioner being a non-earning member and a student, for the disability suffered by him, notional income has to be fixed and as per the above said Ruling, for permanent disability assessed above 10% and upto 30%, Rupees Three lakhs shall be provided. In the said Ruling, it is held as follows:-

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60% Rs.4 lakhs; upto 90% Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For Permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation".

Following the above said Ruling, the present petitioner having suffered 22% disability, it would be appropriate to compensate him by providing a lumpsum of Rs.3,00,000/- for the disability

suffered by him.

13. The petitioner is stated to have been suffered from the injury and he required attender to take care of his day to day work. Considering the period of treatment and nature of injury instead of Rs.5000/- granted by the Tribunal, Rs.10,000/- is provided towards "Attender charges". Thus the petitioner is entitled for the following compensation amount:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Disability	44,000	3,00,000
2.	Pain and suffering	25,000	
3.	Extra nourishment	10,000	10,000
4.	Transportation	5,000	5,000
5.	Attender charges	5,000	
6.	Damage to clothes and articles	1,000	1,000
7.	Medical expenses	200	200
8.	Future medical expenses	---	10,000
	Total	90,200	3,26,200

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed.

(ii) The award amount is enhanced to Rs.3,26,200/- from Rs.90,200/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) The second respondent/State Transport Corporation is directed to deposit the entire enhanced award amount with proportionate interest and cost, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit, the appellant/claimant is entitled to withdraw the same along with accrued interest, except for the delay of 1,103 days. [Vide order of this court dated 12.07.2018 in CMP.No.6261 of 2018 in CMA.SR.No.79978 of 2017]. The appellant is directed to pay the necessary additional court fee for the enhanced award amount before obtaining copy of the decree.

(vi) The Tribunal shall follow appropriate procedure for disbursal of the award amount. No costs.

Addl.Court fee filed 13/8/18 vide
USR 63045 enclosed

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accident Claims Tribunal cum Subordinate Court, Sankari.

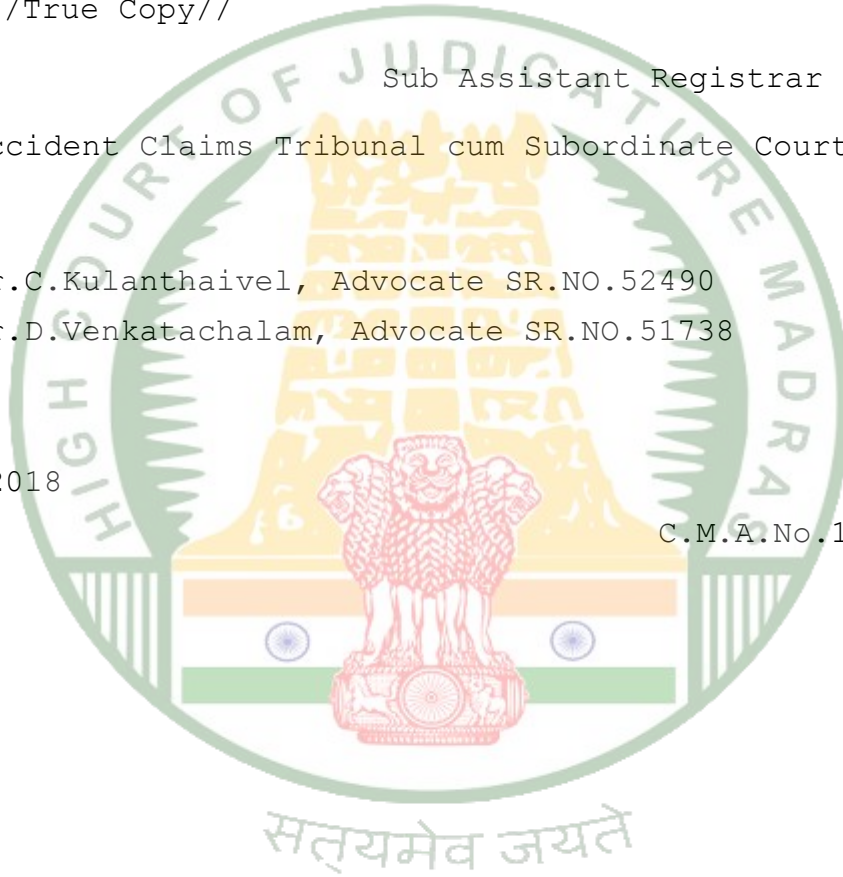
+1cc to Mr.C.Kulanthaivel, Advocate SR.NO.52490

+1cc to Mr.D.Venkatachalam, Advocate SR.NO.51738

GJII(CO)

sm:22.10.2018

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