

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2011 of 2018
and
CMP.No.15625 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Trichy.Appellant/Respondent

Vs

SubedhaRespondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Order made in M.C.O.P. No.303 of 2006, dated 12.9.2014 on the file of the Additional District and Sessions Judge Cum Chief Judicial Magistrate, Ariyalur.

For Petitioner : Mr.D.Venkatachalam

For Respondents : Mr.C.Sivakumar

O R D E R

Being aggrieved by the quantum of compensation of Rs.9,34,000/- awarded by the Motor Accident Claims Tribunal (Additional District and Sessions Judge-cum-Chief Judicial Magistrate) Ariyalur, for the injuries sustained by the respondent, the appellant-Tamil Nadu State Transport Corporation has preferred this appeal.

2. Brief facts are that on 30.01.2006 at 7.00 A.M., when the respondent, guardian of the respondent and her mother were standing in front of their house at Samathuvapuram, Ariyalur to go to her grandmother's home, a bus bearing registration No.TN-45 N 1718 belonging to the appellant driven by its driver in a rash and negligent manner dashed against the respondent, who was a minor at that time. Due to accident, the respondent sustained multiple grievous injuries all over her body. Immediately, after the accident, she was taken to Government Hospital, Tanjore,

where her right leg below the knee was amputated. Regarding the accident, a criminal case was registered against the driver of the appellant bus in Crime No.10 of 2006 under Sections 279 and 338 I.P.C. On the file of Keezhapalur Police Station. At the time of accident, the respondent was a minor and was studying in school. Stating that the accident was due to rash and negligent driving of the appellant's bus driver and that the right leg below the knee was amputated, the father of the petitioner, filed the Claim Petition claiming compensation of Rs.10,00,000/-.

3. Denying the accident, the appellant has filed counter stating that on 30.01.2006, the appellant's bus was driven by its driver with all care and caution on its regular trip from Ariyalur to Trichy. When the bus was nearing Varanasi Samathuvapuram Bus stop, the appellant's bus driver reduced the speed of the bus and he had been in the opposite side there was a private bus parked in the right side of the bus and behind of the private bus a minor girl suddenly crossed the road. On seeing this, the appellant's driver sounded horn, applied brakes, swerved the bus to his extreme left side and stopped the bus. In spite of it, the minor girl lost her balance and dashed against the front right corner of the standing bus and fell down and sustained injuries. Thus the accident was not occurred due to rash and negligent driver of the drive of the appellant. It is also stated in the counter that the amount claimed by the petitioner is highly excessive and out of proportions.

4. At the time of filing claim petition in the year 2006, the injured was aged 14 years and pending claim petition, she attained majority and guardian was discharged.

5. Before the Tribunal, the petitioner was examined as P.W.1 and Dr.Kanmani was examined as P.W.2 and Exs.P1 to P8 were marked. On the side of the appellant, no oral and documentary evidence was adduced.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to rash and negligent driving of the driver of the appellant. Finding that in the accident, the respondent sustained multiple grievous injuries and her right leg below the knee was amputated and taking the monthly income of the respondent at Rs.4,500/- per month and adopting multiplier 16, the Tribunal calculated the permanent disability at Rs.8,64,000/-. Adding compensation under other heads i.e., pain and suffering, transport charges

and extra-nourishment, the Tribunal awarded total compensation of Rs.9,34,000/- as under:

Permanent disability	:	Rs.8,64,000.00
Pain and suffering	:	Rs. 50,000.00
Transport charges	:	Rs. 10,000.00
Extra-nourishment	:	Rs. 10,000.00

Total	:	Rs.9,34,000.00

Being aggrieved by the said award, appellant-Transport Corporation has preferred this appeal.

7. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of respondent and secondly, none of those findings are under challenge. Only quantum of compensation is under challenge.

8. The learned counsel for the appellant contended that the Tribunal ought not to have taken the loss of earning capacity of the claimant at 100%, which is on the higher side. The Doctor has assessed the disability of the claimant only at 72% and the Tribunal ought to have taken the loss of earning only to that extent alone. He would submit that there is no evidence on record to show that as to how the disability sustained by the claimant would be affected her earning capacity in future. The learned counsel further submitted that the Tribunal ought not to have adopted multiplier method to calculate the loss of earning capacity. The monthly income of Rs.4500/- taken by the Tribunal is on the higher side.

9. Per contra, the learned counsel appearing for the respondent submitted that since the respondent sustained multiple grievous injuries all over the body and in fact, her right leg below the knee was amputated, the Tribunal ought to have awarded more amount than awarded. Anyhow, he would submit that the compensation awarded by the Tribunal need not be disturbed.

10. The respondent, who was a minor aged 14 years at the time of accident, sustained multiple grievous injuries all over the body in the accident took place on 30.01.2006. Moreover, due to accident, her right leg below the knee was amputated, which was evident from the evidence of P.W.2-doctor. P.W.2-doctor, assessed the disability suffered by the respondent and on examination, he had assessed the disability at 72% and issued Ex.P7-disability certificate. The x-ray taken during the course of examination was also marked as Ex.P8 before the Tribunal. In

his cross-examination, P.W.2-doctor categorically stated that the respondent will be able to walk only if artificial leg has been fixed.

11. Though P.W.2-doctor issued disability certificate assessing the disability at 72%, the Tribunal had taken the disability only at 60% for the purpose of calculating the permanent disability. Considering the complications that would occur in future, the Tribunal has held that the injuries sustained by the respondent are grievous in nature and that the same are permanent disability.

12. It appears that at the time of delivering the order by the Tribunal, the respondent was First Year Medical student and taking her notional monthly income at Rs.4,500/- and adopting multiplier 16 as per the Second Schedule, the Tribunal has awarded Rs.8,64,000/- towards permanent disability. As far as other heads are concerned, the Tribunal has granted Rs.50,000/- towards pain and suffering, Rs.10,000/- towards transport charges and Rs.10,000/- towards extra-nourishment, which in my considered view are just and reasonable.

13. The Hon'ble Apex Court in the case of V. Mekala v. M. Malathi and another, 2014 (3) TAC 5 (SC), which was also a case of disability of a student caused by an accident found that notional income of Rs. 6,000/- determined by the Tribunal for purpose of awarding compensation is too meagre. Relying upon the facts and circumstances and the law laid down in the case of Reshma Kumari v. Madan Mohan, 2013 (1) TAC 369, held Rs. 10,000/- monthly notional income for computation of just and reasonable compensation under the head of loss of income. However, in the case on hand, the Tribunal has taken the monthly notional income of the respondent at Rs.4500/-. Since the respondent has not chosen to appeal against the same, this Court is not deliberating on the said issue and the same, in the considered opinion of this Court, is just and reasonable.

14. In the case of Raj Kumar v. Ajay Kumar and another, reported in 2011 (1) SCC 343, Hon'ble Supreme Court held as under :

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use

of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%."

15. The aforesaid observation made by Hon'ble Apex Court in the case of Raj Kumar (supra), was reiterated in the case of

Govind Yadav v. New India Insurance Company Ltd., 2012 (1) TAC 1 (SC), by observing as under :

"14. The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. 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.

15. In our view, the principles of law laid down in Arvind Kumar Mishra v. New India Assurance Company Ltd. (supra) and Raj Kumar v. Ajay Kumar (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

16. It cannot be disputed that because of the accident the claimant-respondent who was an active girl of 14 years at the time of occurrence has not only lost her right leg below the knee, but also sustained multiple grievous injuries all over the body. It is really difficult in this background to assess the amount of compensation for the pain and agony suffered by her for having become a life long handicapped. No amount of compensation can restore a physical frame of the claimant.

17. In cases of motor accidents the endeavour is to put the dependant/claimant in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.

18. Viewed from any angle, this Court is of the view that the total compensation awarded by the Tribunal is just and reasonable and therefore, there is no need to interfere with the same and the appeal preferred by the appellant is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal is dismissed and the order of the Tribunal is confirmed. The appellant is directed to deposit the entire award amount within a period of four weeks from today. Since, it is reported by the

learned counsel for the appellant that the Tribunal has attached the bus belonging to the appellant-Transport Corporation, on production of the copy of this Court, the Tribunal is directed to release the bus immediately. If the appellant fails to deposit the entire award amount with interest within the stipulated time, the Tribunal is having right to attach his bus from him. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The Additional District and Sessions Judge-cum-
Chief Judicial Magistrate,
Ariyalur.

+1cc to M/S.D.venkatachalam, Advocate Sr.61035
+1cc to M/S.C.Sivakumar, Advocate Sr.60783

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