

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017

DELIVERED ON : 27.06.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1578 of 2008
and
Cross Objection No.89 of 2017

CMA.No.1578 of 2008

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Trichi - 620 001. ...Appellant/2nd respondent

Versus

1.Minor Sobana
D/o.Muthusamy
Rep. by her next friend, father
Muthusamy, Neeliyampatti
Musiri Circle. ... 1st Respondent/Claimant

2.N.Balakrishnan ... 2nd Respondent/1st Respondent

Cross Objection No.89 of 2017

Minor Sobana
D/o.Muthusamy
Rep. by her next friend, father
Muthusamy, Neeliyampatti
Musiri Circle. ...Cross Objector

Versus

1. The Managing Director
Tamil Nadu State Transport
Corporation Limited
Trichi - 620 001.

2. N.Balakrishnan
Son of Natesan Pillai. ... Respondents

(Respondents 2 remained exparte before the Tribunal, Hence
notice may be dispensed with in this cross appeal)

Prayer in CMA.No.1578 of 2008:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.79 of 2004 dated 16.12.2006 on the file of the Motor Vehicles Accident Claims Tribunal and Additional District Judge, Fast Track Court III at Namakkal.

Prayer in Cross Objection No.89 of 2017:-

Cross Appeal filed Order 41 Rule 22 of Civil Procedure Code, to enhance the award amount in the judgement and decree made in M.C.O.P.No.79 of 2004 dated 16.12.2006 on the file of MACT/Fast Track Court No.3, Namakkal, by allowing this cross objection with interest.

For Appellant in CMA/
R1 in Cross Objection : Mr.S.V.Vasanthakumar

For R1 in CMA /
Cross Objector in
Cross objection : Mr.C.Thangaraju

R2 : Given up in appeal & Cross appeal

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant / Transport Corporation, against the Judgment and decree made in M.C.O.P.No. 79 of 2004 dated 16.12.2006.

2. The claimant has also filed a cross appeal seeking to enhance the compensation awarded by the Tribunal on the ground that her right leg below knee was amputated and she was suffered with permanent disability at 60%.

3. The brief facts of the claimant is that the injured person, who is a minor girl, on 15.10.2003 at about 17.30 hours at Pappapatti, walking on the left side of the road and at that time, a heavy passenger bus bearing Registration No.TN 45 N 1579, which is owned by the second respondent - driver of the first respondent, driving in a rash and negligent manner and hit the minor girl and caused an accident.

4. The grievous injuries sustained by the minor girl all over the body including crush and bone fracture on her right leg and caused permanent disability. The claimant also underwent

surgery and spent nearly Rs.1,00,000/- for medical expenses. The injured was 12 years old girl and she is permanently and totally disabled, due to amputation below the knee. Hence, the minor claimant has put to totally loss of happiness in her life and she is walking with limb and her marital status and valuable study was also suffered. The claimant has claimed a sum of Rs.16,00,000/- as compensation.

5. The appellant herein has filed the appeal on the ground that the award of Rs.5,04,000/- for 60% disability, by applying multiplier 14 is erroneous and for the amount awarded for pain and suffering is also on the higher side and hence, the total compensation of Rs.6,83,000/- is not warranted and requires interference by this Court.

6. The Tribunal had analyzing the evidence and also the documents placed before it and has awarded a sum of Rs.6,83,000/-. For awarding such an amount, the documents placed before the Tribunal are perused. P.W.2 has deposed that immediately after accident, the injured was taken to a private hospital at Musiri and then to the Government Hospital, Namakkal and she was given treatment and the injuries sustained by the claimant needed amputation and also amputation was made. It is seen that the injured person was aged 12 years, who was a student at the time of accident and the injuries sustained by her, makes her future life as dark, since she was a minor girl child. One cannot imagine the disability and also the pain and sufferings suffered by her due to the injuries and also during the time of the treatment and also amputation which caused a severe mark of disability on her, which also affected her prospects for bright married life. The disability was assessed at 60%. When verifying the Disability Certificate, it is seen that the amount awarded by the Tribunal itself is appears to be on the higher side. The injured person at the time of accident, was a minor girl who had lost her happiness in playing with the other children and also continuing her studies. The pain and suffering is not only caused due to the injuries, but also affected her future life which has to be properly assessed. Though money cannot compensate the loss and happiness of the girl child and also her future prospects of life, the amount awarded by the Tribunal is not excessive, as argued by the appellant.

7. The claimant has also filed a cross objection to enhance the amount awarded by the Tribunal on the ground that her right leg below knee was amputated and she was suffered with 60% of permanent disability.

8. On perusal of the records, it is observed that the injured is 12 years old girl and she is permanently and totally

disabled, due to amputation below the knee. It is also observed that she had to put lot of severe pain and suffering due to the surgery. Considering the injured being a girl of 12 years, she has lost the amenities to a greater extent. The prospects of future regarding her marriage is also a painful one. The injured being a young girl is prevented from all sports activities like any other children.

9. On the side of the claimant, it is argued by quoting the case law in Tamil Nadu State Transport Corporation Versus Minor S.Surya, rep. by her father Subramaniam Order dated 22.09.2016.

10. Wherein, the injured person is also a school student of 14 years, sustained grievous injury and in the result there was amputation and the Tribunal has awarded a sum of Rs.13,77,000/-. This Court has analyzed number of judgments with regard to the pecuniary loss sustained by the parents at the time of treatment and during the child's lifetime for the pain and suffering not only for the loss of limb, but the pain that causes to the injured as well as the parents. Hence, the award of the Tribunal on the heads of future earning, pain and suffering, loss of amenities, attendant charges, loss of marriage prospects, medical expenses, transportation and other incidental expenses, extra nourishment and damage to the articles has to be properly determined.

11. This cross objection made by the claimants for the injured who is 12 years, has to be properly compensated by enhancing the amount under various heads awarded by the Tribunal. Hence, the amount awarded by the Tribunal is modified and enhanced as follows:-

S.No.	Heads	Amount awarded by the Tribunal Rs.P.	Amount awarded by this Court Rs.P.
1	Loss of Future earning	5,04,000.00 (3,000x12 x14)	11,66,400.00 (9,000x60/100x12x18)
2	Medical Expenses	28,000.00	28,000.00
3	Pain and Suffering Mental Agony	25,000.00 50,000.00	2,00,000.00
4	Loss of Amenities and Attendant Charges	Nil	2,00,000.00

S.No.	Heads	Amount awarded by the Tribunal Rs.P.	Amount awarded by this Court Rs.P.
5	Loss of Marriage Prospects	40,000.00	3,00,000.00
6	Transport	20,000.00	50,000.00
7	Extra Nourishment	10,000.00	30,000.00
8	Disable from Sports Activities	5,400.00	5,400.00
9	Damage to Articles	600.00	2,000.00
	Total	Rs.6,83,000.00	19,81,800.00

12. Hence, the appeal is disposed of, by enhancing the compensation to the extent indicated above. The Appellant in CMA.No.1578 of 2008 / first respondent in Cross Objection No.89 of 2017 is directed to deposit the enhanced amount of compensation along with, interest at 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of the Judgment. It is seen from the claim petition that as on the date of petition, the minor was aged about 14 years and therefore by now, she would have attained the age of majority. On proper production of proof for attainment of majority of the claimant and also on such deposit made by the transport corporation, the Tribunal shall transfer the amount directly to the bank account of the claimant through RTGS, within a period of two weeks thereafter. The claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mk

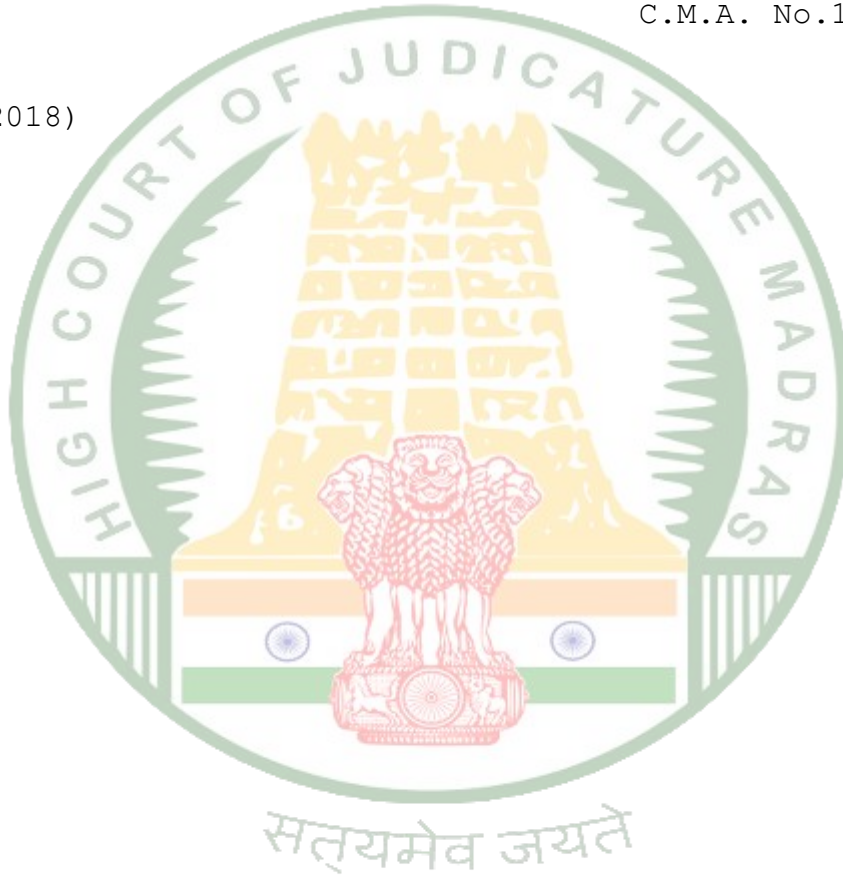
To

1. The Additional District Judge, Fast Track Court,
(the Motor Accident Claims Tribunal)
Namakkal.

+lcc to Mr.S.V.VASANTHAKUMAR, Advocate, S.R.No. 41499
+lcc to Mr.C.THANGARAJU, Advocate, S.R.No. 41200

Judgment
C.M.A. No.1578 of 2008

TM(CO)
TR(03/08/2018)



WEB COPY