

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.3438 of 2008

Minor K.Sarala
rep. by father and natural Guardian
Kabirsamy ... Appellant/Petitioner

Vs

The Managing Director,
Tamil Nadu State Corporation Limited,
Bharathipuram,
Dharmapuri,
Dharmapuri District. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 59 of 1988, against the judgment and decree dated 23.05.2007 made in M.C.O.P.No.2 of 2005 on the file of Motor Accident Claims Tribunal-cum-Additional District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondents: Mr.S.S.Swaminathan

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation award by the learned Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri in MCOP.No.2 of 2005 dated 23.05.2007.

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

(i) The appellant sustained injuries as a result at an accident that took place on 4.7.2004 caused by a Transport Corporation bus bearing Registration No.TN-29-N-1215 owned by the respondent.

(ii) The Motor Accident Claims Tribunal by its Award dated 23.5.2007, in MCOP.No.2 of 2005 directed the respondent to pay the appellant a sum of Rs.70,000/-

together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 23.5.2007 in MCOP.No.2 of 2005 passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the appellant.

4. I heard Mr.M.Selvam, learned counsel for the appellant and Mr.S.Swaminathan, learned counsel for the respondent and perused the entire materials available on record.

5. According to the Learned counsel for the appellant, considering the nature of injuries sustained by the appellant, the Tribunal has not awarded adequate compensation to the appellant. The learned counsel for the appellant submit that the Tribunal erred in awarding a meager sum of Rs.45,000/- towards disability compensation, even though the appellant at the time of accident she is a minor and she sustained injuries.

6. According to the Learned counsel for the appellant, the appellant was a student at the time of accident. Considering the same the learned counsel for the appellant compensation awarded the appellant is meager compensation. Further, the learned counsel would also entered that, no compensation was awarded towards loss of earning capacity and towards loss of amenities. The learned counsel for the appellant would further contend that the compensation awarded under the head of pain and suffering, extra nourishment charges and Transport charges is also meager and no compensation was awarded to the appellant towards attender charges.

7. Per contra, the learned counsel for the respondent/corporation would submit that the accident happened in the year 2003. Considering the nature of injuries sustained by the appellant, the Tribunal has awarded a just compensation to the appellant.

8. This court after having considered the materials available on record and after examining the impugned award and after hearing the submission of the respective counsels observes the following:

a) It is an undisputed fact that only due to the rash and negligent driving by the driver of the Transport Corporation bus of the respondent, the accident had happened which resulted in injuries sustained by the appellant.

b) The appellant has sustained fracture 1) FRACTURE IN SHAFT OF LEFT HUMERUS LEFT SIDE, 2) DEFORMITY PAIN TENDERNESS AND ABNORMAL MOBILITY OF LEFT ARM, 3) HEAD INJURY-DROWSY AROUSABLE, VOMITTING, ONE EPILEPSY, LEFT EAR BLEED, 4) MULTIPLE ABRASIONS OVER RIGHT ARM ELBOW RIGHT FORE ARM. The appellant was

examined PW3 Dr.Thiruvankavan who has deposed that the claimant sustained fracture of left HUMERUS LEFT SIDE BONE, which even after treatment has not joined properly and gave disability certificate of 30% disability with respect to that alone. Further Dr.Shankar, who was examined in PW4 as stated that the claimant sustained head injuries and one of the bore of the skull has not joined and gave disability certificate of 15% disability. The tribunal was award a total sum of Rs.45,000/- for permanent disability of 45% which is a very meager amount given the fact that the claimant is a minor, whose future has been levitated by the accident. Considering the facts and circumstances of the case, and the settlement position of law in Rajkumar Vs. Ajaykumar, 2011(1) SCC 343.

9. Therefore, the Tribunal has to first decide whether there is any Permanent Disability and, if so, the extent of such Permanent Disability. This means that the Tribunal should consider and decide with reference to the evidence.

- (i) Whether the disablement is permanent or temporary;
- (ii) If the disablement is permanent, whether it is permanent total Disablement or Permanent Partial Disablement;
- (iii) If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the Permanent Disability suffered by the person.

10. If the Tribunal concludes that there is no Permanent Disability then there is no question of proceeding further and determining the Loss of Future Earning Capacity. But if the Tribunal concludes that there is Permanent Disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent Disability of the Claimant based on the medical evidence, it has to determine whether such Permanent Disability has affected or will affect his Earning Capacity.

11. Ascertainment of the effect of the Permanent Disability on the actual Earning Capacity involves three steps. The Tribunal has to first ascertain what activities the Claimant could carry on in spite of the Permanent Disability and what he could not do as a result of the Permanent Disability (this is also relevant for awarding compensation under the head of Loss of Amenities of Life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the Claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the Permanent Disability, the Claimant could still effectively carry on the

activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

12.We shall now consider the question as to what is just and reasonable compensation to be awarded to the claimant. The claimant was a poultry Labourer, he would have earned not less than Rs.4500/- per month.

13.Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lump sum compensation of Rs.2,00,000/- towards loss of future earnings on account of permanent disability, Rs.13,500/- (Rs.4,500 x 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the Medical Bills (Ex.P5), for which an amount of Rs.1,00,000/- is awarded towards Medical expenses, Rs.50,000/- is awarded towards Pain and suffering; Rs.10,000/- is awarded for transport charges and Rs.10,000/- is awarded for attender charges; Rs.10,000/- is awarded towards Extra-Nourishment and Rs.50,000/- is awarded towards Loss of Amenities.

14.The appellant/Claimant being a minor, notional income of Rs.1500/- per month and the age of the minor being 13 years proper multiplier of 15 is applied and thus $1500 \times 12 \times 15 \times 45 / 100 = 1,21,500/-$ a loss of income.

15.As seen from the impugned award, the Tribunal has not awarded any compensation to the appellant towards loss of amenities as well as towards loss of further medical expenses, and attender charges. In the considered view of this court, a sum of Rs.25,000/- will have to be granted to the appellant towards loss of amenities and a sum of Rs.5,000/- will have to be granted to the appellant towards attender charges.

16.The minor suffered accident at a very young age, the pain suffered by her cannot be imagined by any one. The Tribunal has awarded a sum of Rs.5000/- for pain and suffering which is very meager. The same is enhanced to a sum of Rs.10,000/-.

17.Thus the appellant shall be entitled for a sum of Rs.1,21,500/- towards loss of income. Rest of the amount awarded are also enhanced as follows:

1. Pain and suffering : Rs.10,000/-
2. Extra-nourishment : Rs. 3,000/-

3. Transport charges : Rs. 2,000/-
4. Medical expenses : Rs. 15,000/-
5. Loss of income : Rs.1,21,500/-
6. Loss of amenities : Rs. 25,000/-
7. Attender charges : Rs. 5,000/-

Total Rs.1,81,500/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

18.The respondent /Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this court with interest and costs before the Tribunal after deduct the amount already deposited if any within the period of six weeks. From the date of receipt of copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the amount lying to the credit of M.P.No.2 of 2005 along with accrued interest by filing an appropriate application.

19.In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal, to the tune of Rs.70,000/- is enhanced to Rs.1,81,500/- rounded of Rs.1,82,000/- with interest @ 7.5% per annum. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal-cum-
Additional District Court, Dharmapuri.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.54354

+1cc to Mr.M.Selvam, Advocate SR.No.54305

C.M.A.No.3438 of 2008

RSI (CO)
GMY (06/05/2019)