

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.12.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3066 of 2017

Minor M.Hariharan,
Son of Manivannan @ Manikandan
(Minor rep by next friend/father
Manivannan @ Manikandan) ...Appellant/Claimant

Vs

- 1.Subramaniam (TNSTC Driver)
- 2.The Managing Director,
TamilNadu State Transport Corporation,
(Coimbatore Division - II) Ltd.,
Chennimalai road,
Erode - 1. Respondents/respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the Compensation awarded in the Judgement and Decree dated 28.06.2017 made in MCOP.No.159 of 2013 on the file of MACT/IV-Additional District Court at Bhavani at Erode District.

For Appellant : Mr.M.Lokesh

For Respondents : Mr.J.Lokesh for
Mr.K.J.Siva Kumar for R2.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

For no fault of him, the appellant has lost his two legs in the ghastly accident occurred, when he was walking on the mud road on 28.09.2012 from Sankari to Erode Main Road from north to south direction and hit behind by a bus bearing Registration No.TN-33-N-2718 belonging to the 2nd respondent/transport Corporation, driven by the 1st respondent/driver rashly and negligently at high speed. Therefore, the claim petition was filed.

2.On contest, the tribunal found that the accident occurred because of the rash and negligent driving of the bus and awarded a sum of Rs.5,21,000/- taking Rs.20,000/- as monthly income and

applied multiplier "15" amounting to Rs.3,00,000/- as loss of earning capacity and including other amounts under various heads. Aggrieved with the quantum of compensation, the injured has come before this Court by way of this Civil Miscellaneous Appeal.

3.Heard Mr.M.Lokesh representing Mr.Ma.P.Thangavel, learned Counsel for the appellant and Mr.J.Lokesh representing Mr.K.J.Sivakumar, learned Counsel for the respondents and perused the records.

4.The appeal has been preferred only by the claimants aggrieved over the quantum of compensation and there is no appeal by the transport Corporation regarding the negligence fixed on the driver of the transport Corporation. In any event, a perusal of the records would disclose that based on the evidence of the eye witness PW2 and filing of Ex.P.1, FIR, Ex.P.2, rough sketch, Ex.P.3, observation mahazar and Ex.P.6, charge sheet filed against the 1st respondent, the tribunal rightly found that the accident occurred because of the rash and negligent driving of the bus. Therefore, the settled aspect that it is not questioned by the transport Corporation and the said finding is confirmed.

5.It is evident that the poor victim/appellant lost both his legs completely below the hip as proved by Ex.P.7, photographs and Ex.P.5, accident register. That apart, PW1's evidence would also give the details of the injuries and amputation of both the legs. The tribunal found that the appellant sustained Grade III segmental fracture right femur and segmental fracture of both legs besides degloving injury, crush injury and lacerations resulting in amputation of right leg above knee and amputation of left leg below knee. The tribunal also did see the appellant at the time of enquiry and factually found that both the legs of the appellant were amputated and the appellant is crawling for moving from one place to another place.

6.Considering the fact that the appellant was eight years old at the time of accident and was a school guy, the tribunal took Rs.20,000/-as income of the appellant notionally per annum and took '15' multiplier as per the Judgment of the Honourable Supreme Court in "R.K.Malik Vs.Kiran paul" reported in "2009 (1) TNMAC 593 (SC)" and awarded a sum of Rs.3,00,000/- as loss of earning capacity. The said determination adopted by the tribunal is a faulty one. The Honourable Supreme Court in "V.Mekala Vs.M.Malathi & another" reported in "2014 (2) TNMAC 6 (SC)" while considering the case of a 11th standard student, who suffered 70% disability, took Rs.15,000/- as monthly income and determined the loss of income. The said Judgement has also been followed by a division bench in which I was one of the parties in C.M.A.No.2017 of 2015 dated 26.10.2018 in "The Oriental

Insurance Company Limited Vs.Minor Soundarya and two others". Therefore, this Court is inclined to follow the said Judgement and fix the monthly income at Rs.10,000/- instead of Rs.15,000/-.

7.40% of Future prospects has to be added as per the Judgment in "National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC)", as the appellant was only eight years old at the time of accident. Along with the future prospects, the monthly income would be Rs.10,000/- + 40% of future prospects = Rs.14,000/-.

8.The tribunal determined the disability at 100% based on the disability certificate Ex.C.1 issued by the District Medical Board, Erode attached to the Government Headquarters Hospital, Erode District. Therefore, the loss of earning capacity is 100%. The age of the appellant/minor was eight years at the time of accident and the appropriate multiplier as per the Judgement in "Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC)" is '18' and therefore, the loss of income would be Rs.14,000/- x 12 x 18 = Rs.30,24,000/-

9.The appellant was a eight year old school going child. He was walking on the road and suddenly, the transport Corporation bus hit behind him and that would have caused shock, pain and mental agony. As a child, the appellant would not have been able to withstand the unbearable pain and resultant agony. The tribunal has granted Rs.1,00,000/- towards loss of pain and sufferings. In the opinion of this Court, it is on the lower side. Considering the fact that the appellant has lost both the legs, the sum of Rs.1,00,000/- awarded towards pain and sufferings is enhanced to Rs.2,00,000/-.

10.Only Rs.10,000/- was awarded towards Extra nourishment and it would have taken a long time for the appellant to become normal after surgeries in which both the legs were amputated and therefore, a sum of Rs.50,000/- is awarded towards extra nourishment. Rs.10,000/- awarded towards transportation is too low as the appellant should have visited the hospital many times and he would have travelled only by vehicle and the same is enhanced to Rs.50,000/-.

11.If anybody chooses to remain as a bachelor, it is his wish whereas the young boy child throughout his life has to be necessarily remain as a bachelor because of the unfortunate accident. Since the decision is forced upon , by virtue of consequences of the accident, for that also, the respondent has to pay the compensation. It is very difficult for a normal boy to get a suitable bride nowadays. When such is the position, it is highly impossible for the appellant with his amputated legs to get an alliance. To put it in other words, the marital

prospects are nil. The marital bliss is necessary for any human being whether man or woman, unless one constantly takes a decision to remain as a bachelor or a spinster. Since the accident was responsible for the present position of the appellant, a sum of Rs.3,00,000/- is awarded towards loss of marital prospects.

12. Since both the legs were amputated below the hip, the chances of using artificial legs is not possible. Therefore, this Court is inclined to grant a sum of Rs.2,00,000/- towards loss of amenities. Since, both the legs were amputated, throughout his life, he has been crippled once for all and as rightly found by the tribunal, he has to crawl to move out that too with the help of others and the appellant cannot look after his own work and he has to depend upon a third party throughout his life. Therefore, this Court relying upon the Judgment of the Honourable Supreme Court in "Kavita Vs. Deepak and Others" reported in "2012 (2) TN MAC 362 (SC)" in which a sum of Rs.6,00,000/- was awarded towards attendant charges at the rate of Rs.2,000/- per month for 25 years to look after a injured victim who was aged about 30 years and sustained 90% disability. Following the said Judgment, a Division Bench of this Court, as stated above, in C.M.A.No.2017 of 2015 awarded a sum of Rs.6,00,000/- towards attendant charges for a eight year old victim who sustained 85% disability. Therefore, based on the above Judgment, a sum of Rs.6,00,000/- is awarded towards attendant charges. Therefore, a sum of Rs.5,21,000/- awarded by the tribunal is modified and calculated as follows:

SI.No.	Head	Amount (Rs.)
1.	Loss of income	30,24,000
2.	Pain and sufferings	2,00,000
3.	Extra nourishment	50,000
4.	Transportation	50,000
5.	Loss of marital prospects	3,00,000
6.	Loss of amenities	2,00,000
7.	Attendant Charges	6,00,000
	Total	44,24,000

9. Hence, the total compensation payable in this case is Rs.44,24,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The appellant shall pay the additional Court fee within two weeks from the date of receipt of the copy of this order failing which the enhancement made shall not accrue to the appellant.

10.The 2nd respondent is directed to deposit the entire award amount along with interests and costs within a period of eight weeks from the date of receipt of a copy of this order failing which the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court on 08.02.2019. The amount shall be deposited in the trial Court in the account to be opened in the name of the minor by the father of the minor viz., Manivannan @ Manikandan. On such deposit, the tribunal is directed to transfer Rs.15,00,000/- to the account of the father of the appellant viz., Manivannan @ Manikandan through RTGS within a period of one week thereafter and the balance amount shall be deposited in any one of the Nationalised Banks in the name of the minor in interest bearing fixed deposit until he attains majority. The appellant's father is permitted to withdraw the accrued interest thereon once in every two months.

11.Accordingly, this appeal is allowed, by enhancing the award of the Tribunal from Rs.5,21,000/- to Rs.44,24,000/-.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay/jas

To

- 1.The IV Additional District Judge
(Motor Accidents Claim Tribunal)
Bhavani,Erode District.
- 2.The Chief Financial Officer-cum-Chief Accounts Officer,
TamilNadu State Transport Corporation,
(Coimbatore Division - II) Ltd.,
Chennimalai road,
Erode - 1.
- 3.The Chairman-cum-Managing Director,
TamilNadu State Transport Corporation,
(Coimbatore Division - II) Ltd.,
Chennimalai Road,
Erode - 1.

Copy To:

- 1.The Sub Assistant Registrar(Judl),
High Court, Madras.

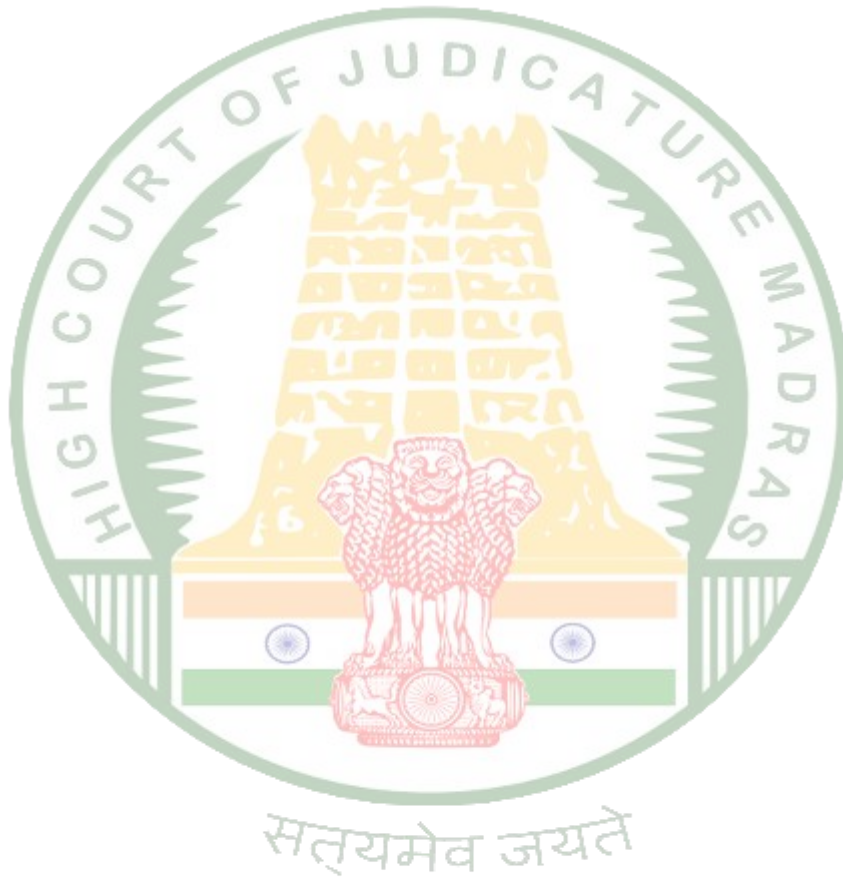
2.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.P.Thangavel, Advocate, S.R.No.86972
+lcc to Mr.K.J.Sivakumar, Advocate, S.R.No.87169

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TM(CO)

rrs 24/01/2019



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