

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2675 of 2018
and C.M.P.No.20193 of 2018

The Managing Director
Tamil Nadu State
Transport Corporation
Salamedu, Villupuram.

.. Appellant/Respondent

Vs.

Minor Nivetha Represented by
her father and natural guardian
Ganapathy, S/o.Govindasamy
residing at:Kizhnachippattu post
Vanianthangal village
Kamatchiyamman koil street
Tiruvannamalai.

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award dated 30.07.2014 made in M.C.O.P.No.480 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.Sivakumar K.J.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 30.07.2014 made in M.C.O.P.No.480 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

2. The appellant is the respondent and respondent is the petitioner in M.C.O.P.No.480 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai. The respondent/minor filed the said M.C.O.P. for claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that occurred on 20.08.2012.

3. According to the respondent, on 20.08.2012, while she was pushing her bi-cycle and walking on the left extreme of the road, the driver of the bus belonging to the appellant Transport Corporation, who drove the bus in a rash and negligent manner, dashed against the respondent and caused accident. Due to the said impact, the respondent sustained multiple injuries all over her body. According to the respondent, the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. At the time of accident, the respondent was 11 years old and she was studying 6th standard in VTS Higher Secondary School, Tiruvannamalai.

4. The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondent. According to the appellant, the respondent suddenly crossed the road without noticing the bus. The driver of the bus stopped the bus on seeing the respondent. The respondent came and dashed against the bus, fell down and sustained injuries. Therefore, the appellant is not liable to pay compensation to the respondent.

5. Before the Tribunal, the appellant examined one Ganapathy as R.W.1 and no document was marked. The respondent examined her father viz., Ganapathy as P.W.1 and examined the Dr.K.Raveender, who gave treatment, as P.W.2 and marked fifteen documents as Exs.P1 to P15.

6. The Tribunal after considering the pleadings, oral and documentary evidence came to the conclusion that the appellant was responsible for the said accident and awarded a sum of Rs.2,60,314/- as compensation to the respondent/claimant.

7. Against the said award passed by the Tribunal, dated 30.07.2014 made in M.C.O.P.No.480 of 2012, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant contended that the evidence of P.W.1 has not been corroborated by any other independent witness. The Tribunal without properly appreciating the evidence on record awarded the amounts on higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

9. I have heard the learned counsel for the appellant and perused all the materials available on record.

10. The father of the respondent/P.W.1 in his evidence deposed that while the respondent was pushing her bi-cycle along the road, the appellant bus came and dashed against her. The driver of the appellant bus alone drove the bus in a rash and negligent manner and dashed against the respondent. The Tribunal considering the evidence of P.W.1, held that the driver of the bus should have anticipated the movement of the cyclist and should have cautiously drove the bus. Moreover, Ex.P2/report of

the Motor Vehicle Inspector reveals that the right side of the bumper of the bus is damaged. A bi-cycle would not have caused that much damage to the standing bus. So the driver of the bus drove the bus in a rash and negligent manner without noticing the respondent. Therefore, the accident occurred only due to the negligent act of the driver of the bus belonging to the appellant Transport Corporation. I do not find any error in the reasoning of the Tribunal. 11. As far as the quantum of compensation is concerned, on the date of accident i.e., on 20.08.2012, the respondent was admitted in Tiruvannamalai Government Hospital and then shifted to Indira Gandhi Hospital, Pondicherry. She was discharged on 26.09.2012. Again, she was admitted on 29.09.2012 and discharged on 15.10.2012. She had sustained degloving injury on her left leg and that she had underwent plastic surgery. Further, the respondent was taking treatment as out-patient from 24.12.2012 to 19.11.2013. P.W.2/Dr.K.Raveender deposed that the respondent will not be able to lift her toe and she needs support while walking. P.W.2/Doctor has assessed the disability at 40% for the crush injuries on the left leg from the knee to the foot. The Tribunal considering the evidence, awarded a sum of Rs.70,000/- at the rate of Rs.3,000/- per percentage for 40% disability, which is in order. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.2,60,314/- as compensation to the respondent/claimant under different heads. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant Transport Corporation is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The award amount shall be deposited in any one of the Nationalised Bank at Tiruvannamalai for a period till the minor respondent attains majority. The father of the respondent is permitted to withdraw the interest amount once in three months for the welfare of the minor respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

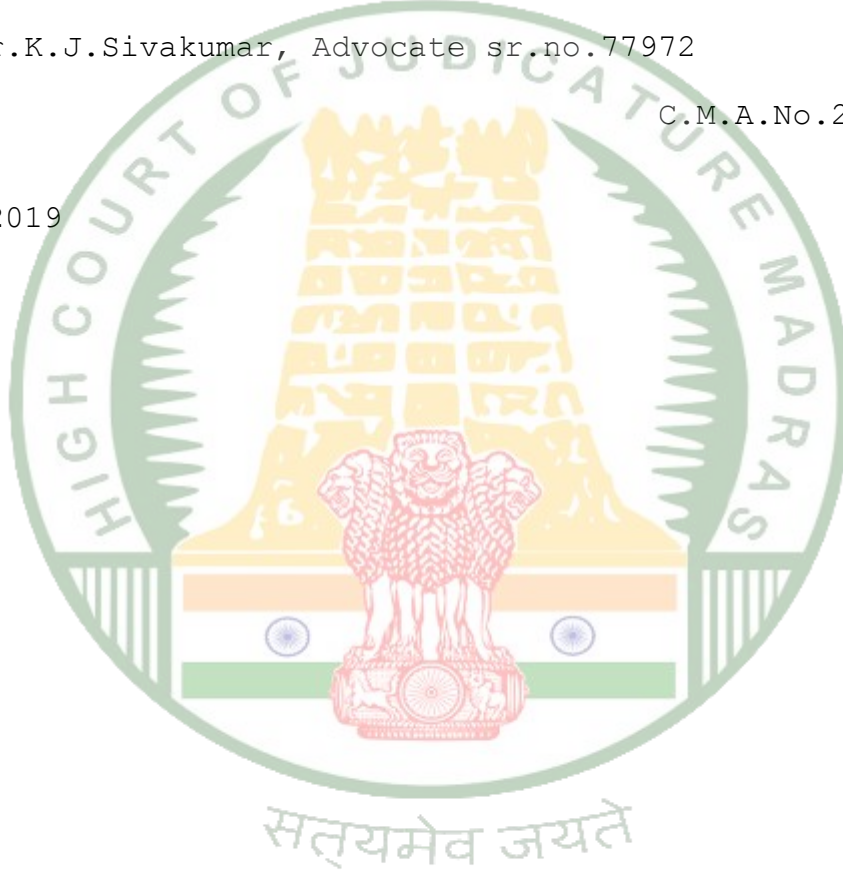
1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal
Tiruvannamalai.

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

+1cc to Mr.K.J.Sivakumar, Advocate sr.no.77972

C.M.A.No.2675 of 2018

gp(co)
nr 06/03/2019



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