

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.974 of 2009

R.Kayathri,
D/o.Rengarajan
No.331-F, Vasantha Nagar,
Thiruvagoundanoor, Salem - 636 005.

...Appellant

(Sole appellant declared as major and her next friend and father discharged from guardianship as per the memo filed by the appellant counsel and as per the court order dated 16.09.2019, in CMA.No.974 of 2009)

vs.

1.The Managing Director,
Tamil Nadu State Transport Corp. Ltd.,
Villupuram.

2.Archean Granites Pvt. Ltd.,
No.218/2, Madhavaram Redhills road,
Puzhal, Chennai - 600 066.

3.The Oriental Insurance Co. Ltd.,
Kamala Arcade, 2nd floor,
669, Mount road,
Chennai - 600 006.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.07.2008 passed in MCOP.No.329 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Court and Special Court for Essential Commodities Act, Salem.

For Appellant : Mr.P.Sathish
For Respondents : Mr.S.V.Vasanthakumar for R1
Mr.N.Sampath for R3
No appearance for R2

JUDGMENT

The appellant, R.Kayathiri is the claimant in MCOP.No.329 of 2007 on the file of the Motor Accidents Claims Tribunal / Additional District Court and Special Court (for Essential Commodities Act), Salem. Since she was aged 8 years on the date of the accident and a minor, she was represented by her father Rengarajan. The petition was filed under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.25,00,000/- for the injuries sustained by R.Kayathiri in a road accident that took place on 22.05.2006.

2. The case of the claimant in nut shell is as follows:

On 22.05.2006, the deceased Balaji and the injured Kayathiri were

travelling along with their parents in a bus bearing Registration No. TN 23 N 1588 from Chennai to Salem. When the bus was nearing Nandhiyalam Petrol Bunk, at about 4.45 am, the driver of the bus drove the bus rashly and negligently and hit a lorry bearing Registration No. TN 20 Q 7510, while he attempted to overtake the said lorry. The deceased Balaji died on the spot and the claimant R.Kayathiri sustained grievous injuries all over her body. The injured was studying in a School. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration No. TN 23 N 1588 belonging to the Tamil Nadu State Transport Corporation Limited was the cause of the accident and therefore, they are liable to pay compensation of Rs.25,00,000/- to her.

3. The second respondent, owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The and third respondents contested the claim petition. The learned Motor Accidents Claims Tribunal / Additional District Judge and Special Judge (for Essential Commodities Act), Salem after analysing the evidence on record, awarded a compensation of Rs.1,89,750/- together with interest at the rate of 7.5% per annum to the injured in MCOP.No.329 of 2007. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.P.Sathish, learned counsel appearing for the appellant contended that the left leg of the appellant was amputated and Dr.Geetha (PW2) had assessed the partial permanent disability as 55%. He also relied on the decision of a Division Bench of this Court in **Minor M.Hariharan, Son of Manivannan @ Manikandan vs. Subramaniyam (TNSTC Driver) and another** reported in **2019 (3) TLNJ 434 (Civil)** and contended that the Division Bench in the case of a boy aged 8 years who sustained injuries in a road accident fixed the income of the injured as Rs.15,000/- per month and awarded a compensation of Rs.44,24,000/-. He therefore contended that by applying the same analogy, the compensation awarded by the Tribunal should be enhanced in the present case.

5. In the case in **Minor M.Hariharan, Son of Manivannan @ Manikandan vs. Subramaniyam (TNSTC Driver) and another (cited supra)**, the injured was aged eight years and he had lost his both legs and the doctor had contended that he has sustained 85% of disability. Since there was total disablement, the Division Bench had considered the disability as 100% and awarded a compensation of Rs.44,24,000/-. In the instance case, the injured's left leg was amputated and Dr.Geetha (PW2) assessed the partial permanent disability as 55%. Since the age of the injured was eight years, the proper

multiplier to be adopted in the instance case is 18 as per the decision rendered in **Sarlavarma and others vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. The Tribunal has rightly fixed the notional income of the injured as Rs.15,000/- per month and the same is hereby confirmed. The "partial permanent disability" is calculated as below:

Partial permanent disability:

$$= \text{Rs.}15,000/- \times 12 \times 18 \times 55/100$$

$$= \text{Rs.}17,82,000/-$$

6. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial Permanent Disability	Rs.17,82,000/-
2.	Pain and Suffering	Rs.1,00,000/-
3.	Loss of amenities	Rs.1,00,000/-
4.	Loss of marriage prospects	Rs.2,00,000/-
5.	Transportation	Rs.10,000/-
6.	Extra Nourishment	Rs.10,000/-
7.	Attender's charges	Rs.10,000/-
8.	Damage to clothes	Rs.1,000/-
Total		Rs.22,13,000/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,89,750/- to Rs.22,13,000/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,89,750/- to Rs.22,13,000/-.

(iii) The appellant is directed to pay the court fee for the enhanced compensation amount, if any, within three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The respondent, Tamil Nadu State Transport Corporation Limited is directed to deposit the entire compensation amount i.e., Rs.22,13,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 329 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Court and Special Court (for Essential Commodities Act), Salem within a period of four weeks from the date

of receipt of a copy of this order.

(v) On such deposit being made, the appellant is at liberty to withdraw the same after following due process of law.

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Index : Yes/No
Speaking / Non-speaking order

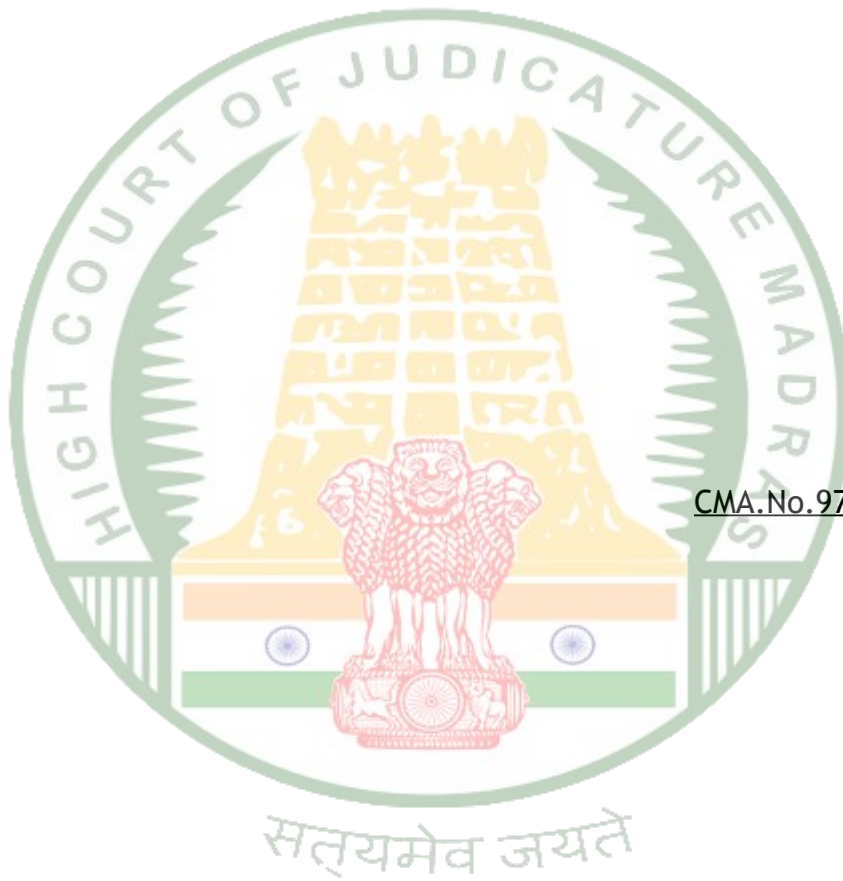
To
The Motor Accidents Claims Tribunal,
The Additional District Court and Special Court
(for Essential Commodities Act),
Salem.



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R. HEMALATHA, J.

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