

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1266 of 2012

Prakash

... Appellant/Claimant

vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai-600 002.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 20.11.2007 made in M.A.C.T.O.P.No.4453 of 2002 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai.

For Appellant : Mrs.A.Subadra
for M/s.M. Malar

For Respondent : Mr.K.S.Suresh

JUDGMENT

The appellant is the claimant in M.A.C.T.O.P.No.4453 of 2002 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.1,50,000/- for the injuries sustained by him in a road accident on 04.01.2002.

2. The case of the claimant is that on 04.01.2002, he was boarding a bus bearing Registration No.TN-01-N-2277 belonging to the Metropolitan Transport Corporation Limited and that since the driver of the bus started moving the bus rashly and negligently without seeing the passengers getting into the bus, he fell down and sustained grievous injuries.

3. The learned Motor Accident Claims Tribunal / II Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.41,500/- together with interest at

the rate of 7.5% per annum to the claimant. Not being 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. Mrs.A.Subadra, learned counsel appearing for the appellant / claimant contended that the claimant was aged 15 years on the date of the accident and as per decision in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., & another reported in 2013 (2) TN MAC 338 (SC) a consolidated sum of Rs.3,00,000/- should be awarded, especially when Dr.N.Saichandran (PW2) had assessed the partial permanent disability suffered by the claimant as 35%. She therefore prayed for enhancement of compensation.

5. Per contra, Mr.K.S.Suresh, learned counsel appearing for the respondent / Metropolitan Transport Corporation contended that in the instant case, the claimant himself had contended that he was a daily wage labourer earning a sum of Rs.50/- per day and therefore, the decision rendered above in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., & another (cited supra) cannot be applied to the facts of the present case. He also contended that the Tribunal after considering all the aspects of the case had awarded a just compensation of Rs.41,500/- and therefore, the same need not be disturbed at this stage.

6. A perusal of the discharge summary-Ex.P1 shows that the claimant has suffered "'undisplaced fracture medial condyl and right femur'". It is pertinent to point out that the claimant was aged 15 years, on the date of the accident.

7. In paragraph Nos.8 and 12 of the decision in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., & another reported in 2013 (2) TN MAC 338 (SC), it has been held thus:-

8. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D.Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd. And others [1], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration,

etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick."

8. Though it is contended by the father of the injured that his son was a daily labourer no proof was filed by him. It is pertinent to point out that the injured was aged just 15 years on the date of accident.

9. Dr.N.Saichandran (PW2) had assessed the partial permanent disability suffered by the claimant as 35% and the same has to be reduced to 10% in respect of whole body disability and in the facts and circumstances, a sum of Rs.3,00,000/- is awarded for the injuries sustained by the claimant as per the decision laid down in Master Mallikarjun's case (cited supra).

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.41,500/- to Rs.3,00,000/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of 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 / Metropolitan Transport Corporation Limited is directed to deposit the entire compensation amount i.e., Rs.3,00,000/- (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 M.A.C.T.O.P.No.4453 of 2002 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai, 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 / claimant is at liberty to withdraw the same, after following due process of law.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.1266 of 2012

VBA (CO)
SP(05/03/2020)