

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.09.2019
CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.2134 of 2012
and 995 of 2013
and M.P.No.1 of 2012

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 2

... Appellant in CMA No.2134/2012 /
& Respondent in CMA No.995/2013
/ Claimant

..vs..

P.Vivina (Minor) aged 8 years,
Rep. by her mother and next
friend, P.Vanitha

... Respondent in CMA No.2134/2012
& Appellant in CMA No.995/2013

Appeals filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 09.12.2011 made in M.C.O.P.No.3204 of 2007 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant in CMA No.2134 / 2012
& For respondent in CMA No.995/2013 : Mr. S.Sivakumar
For Respondent in CMA No.2134 / 2012
& For appellant in CMA No.995/2013 : Mr. E.Maharajan

C O M M O N J U D G M E N T

P.Vivina, aged 3 years, met with an accident on 08.11.2006, while going along with her mother in the motorcycle bearing Registration No.TN02-T-9905. When the motorcycle was nearing Indira Nagar, 1st Main Road, the Transport Corporation bus bearing Registration No.TN01-N-2135 came in a rash and negligent manner and hit the backside of the motorcycle, thereby her mother and the claimant as rider and pillion rider sustained grievous injuries. Contending that the Transport Corporation Bus driver was responsible for the accident, the claimant has filed a claim petition before the Tribunal claiming a sum of Rs.13,00,000/- as total compensation. The Tribunal has awarded a sum of Rs.4,82,000/-, as compensation.

2. Aggrieved over the quantum of compensation as exorbitant, the Transport Corporation has preferred CMA No.2134 of 2012. Claiming the award as insufficient, the Minor Claimant / injured has filed CMA No.995 of 2013 seeking enhancement of the compensation.

3. Both the appeals arise out of the common judgment in respect of the same accident and hence, the same are heard together and disposed of by this common judgment.

4. The learned counsel for the Transport Corporation submitted that the Tribunal ought to have accepted the evidence of R.W.1 and dismissed the claim petition, since R.W.1, in his evidence, has denied the manner of accident; the Tribunal ought to have disbelieved the evidence of P.W.2-Doctor, since he has not given any treatment and he has assessed the disability only at the time of trial; the quantum of compensation awarded by the Tribunal at Rs.4,82,000/- is highly excessive and arbitrary and hence, the same has to be reduced.

5. On the other hand, the learned counsel appearing for the claimant submitted that considering the nature of injuries sustained by the claimant and the percentage of disability caused to her on account of the accident, the Tribunal ought to have awarded the entire compensation as claimed by the claimant, whereas it has awarded only a meager sum as compensation; hence, the quantum arrived at by the Tribunal needs substantial enhancement. In support of the said contentions, the learned counsel for the claimant relied upon the decisions reported in the case of Master Mallikarjun v. The Divisional manager, The National Insurance Company Limited and another (Civil Appeal No.7139 of 2013), dated 26.08.2013; Minor Ravishankar v. K.Balachandran (CMA No.1315 of 2019), dated 03.04.2019; and The Branch Manager v. Minor. Afrin Nija (CMA (MD) No.144 of 2013), dated 24.03.2015, wherein in all the reported cases, the compensation awarded by the Tribunal to the children, who met with accidents, have been increased manifold by the Supreme Court and this Court.

6. This Court paid its anxious consideration to the submissions made by the learned counsel for both sides and carefully perused the materials available on record.

7. It is an unfortunate case wherein the claimant / minor girl child aged 3 years, sustained fractures and multiple injuries, in a road accident that occurred on 08.11.2006.

Negligence:

8. After elaborating the oral and documentary evidence adduced by the parties, the Tribunal was of the view that

R.W.1-Investigator was not an eye-witness to the accident and the driver of the bus was not examined to torpedo the evidence of P.W.1, and accordingly came to the conclusion that the accident had occurred due to the rash and negligent act on the part of the driver of the bus. Thereafter, the Tribunal has fastened the liability on the Transport Corporation. Further, no new ground, fact or evidence was adduced by the Transport Corporation to state that the findings on negligence rendered by the Tribunal are perverse. Hence, this Court is of the opinion that the Tribunal has analysed the materials on record and has rendered its findings on negligence, which need no interference.

Quantum:

9. When a child meets with an accident and sustained injuries, it can have a huge impact on the lives of all family member, the child itself as well as the child's parents, siblings, grandparents and other close kin. In determining the quantum of compensation, the court will have to take into consideration several factors, but not limited to the seriousness of the injury or illness; the impact of the injury or illness on the child's life; and whether the child will need additional support or treatment in the future.

10. The total amount of compensation the child will receive consists of three parts: (i) Actual medical and legal expenses including transportation to the hospital or the court; (ii) Compensation for pain, suffering and reduced quality of life; and (iii) Compensation for future losses and expenses for ongoing medical treatment if necessary.

11. In the case on hand, it is not in dispute that the girl child has the following injuries:-

1. Major crush injury, right elbow, forearm, hand with skin loss in forearm and dorsum of hand;
2. Loss of 5th Metacarpal and skin loss little finger dorsum;
3. crush injury of forearm flexor and extensor muscles;
4. deep abrasions thumb index and Middle ring fingers.

12. Though P.W.2 - Doctor's evidence was in dispute, the above injuries, for the toddler aged 3, speak volumes. With the above discomforts, the claimant has to lead her entire span of life. In the young age, she lost her enjoyment as the child would not play with other children and she bears the stigma for the loss of little finger dorsum, when she mingles with others. She has to live the entire life with the aforesaid sufferings. Hence, this Court is of the view that some amount ought to have been awarded towards loss of amenities and hence, a sum of Rs.50,000/- (Rupees fifty thousand only) is awarded under that head.

13. The Tribunal has not awarded any sum towards loss of expectation of life. Therefore, this Court is of the view that awarding a sum of Rs.30,000/- (Rupees thirty thousand only) towards that head would meet the ends of justice.

14. The Tribunal awarded only a meager sum of Rs.20,000/- towards pain and suffering. Ex.P-6-discharge summary shows that the claimant had undergone surgeries and Ex.P-9-estimation certificate for future medical expenses shows that the claimant will require skin replacement 1st, involving two stage procedure, which will cost around Rs.1 to Rs.1.5 lakhs. Further, the claimant has been taking treatment at regular intervals. This Court is of the opinion that the pain and suffering is not only caused due to the injuries, but also affect her future life, which has to be properly assessed. Hence, this Court is inclined to enhance the amount awarded by the Tribunal to Rs.1,00,000/- and is accordingly enhanced under this head.

14. The Tribunal has not awarded any sum towards loss of marriage prospects. The injured was a girl child aged 3 years, at the time of accident. Ex.P8 is Photograph with CD, a perusal of which would show that the assessment of disability at 65% by P.W.2-Doctor appears to be reasonable. The minor girl was operated twice and she cannot fold her right elbow above 90 degree and she is facing difficulty to lift weight. Hence, her marriage prospects is blink. Though money cannot compensate the loss and happiness of the girl child and also her future prospects of life, this Court is of the view that awarding a sum of Rs.1,00,000/- under this head would meet the ends of justice and is accordingly awarded.

15. Furthermore, the Tribunal has awarded Rs.10,000/- towards Transportation, Rs.10,000/- towards extra nourishment, Rs.12,000/- towards medical expenses, Rs.1,30,000/- towards disability, Rs.1,00,000/- towards future medical expenses and Rs.2,00,000/- towards future prospects, which are just and reasonable having regard to the facts and circumstances of the case and hence, the same are hereby confirmed.

16. In view of the above, the compensation awarded by the Tribunal is enhanced to Rs.7,42,000/-. The breakup details of which run thus:-

Heads	Rs.
Transportation	10,000.00
Extra nourishment	10,000.00
Medical expenses	12,000.00
Future medical expenses	1,00,000.00
Pain and sufferings	1,00,000.00
Disability at 65%	1,30,000.00

Heads	Rs.
Future prospects	2,00,000.00
Loss of amenities	50,000.00
Loss of expectation of life	30,000.00
Loss of marriage prospects	1,00,000.00
Total amount of compensation	7,42,000.00
Amount awarded by the Tribunal	4,82,000.00
Enhanced amount of compensation	2,60,000.00

17. The enhanced compensation shall carry interest at 7.5% per annum only from the date of filing of this Appeal.

18. The Transport Corporation / appellant in CMA No.2134 of 2012 shall deposit the entire amount of compensation i.e., Rs.7,42,000/-, with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to deposit the same, in any one of the nationalized banks initially for a period of three years, which shall be renewed periodically, till the minor girl / claimant attains majority. The guardian / mother of the minor claimant is permitted to withdraw the interest accrued on the fixed deposit, once in three months. Needless to point out that the claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

19. In the result, CMA No.2134 of 2012 filed by the Transport Corporation is dismissed and CMA No.995 of 2013 filed by the claimant is partly-allowed. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

C.M.A.Nos.2134 of 2012 and 995 of 2013
and M.P.No.1 of 2012

VSN II

A-SK(02/03/2020)