

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.39 and 40 of 2014

L.P.Sriranjani ...Petitioner/Appellant in
CMA.No.39 of 2014

P.Dinesh (Minor)
rep. By father & Next friend
Palani ...Petitioner/Appellant in
C.M.A.No.40 of 2014

Vs.

1. V.M.Abdul Samath
(Remained Ex-parte before the Trial Court)

2. The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 002. ...Respondents/ Respondents
in both CMAs

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 19.06.2013 MACT.O.P.Nos.3955 and 3956 of 2008 on the file of the V Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.AI.Arasan
in both CMAs.

For respondents: R1 set exparte in both CMAs

Mr.P.G.Padmanabhan - R2
in both CMAs

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed against the awards dated 19.06.2013 passed in MACT.O.P.Nos.3955 and 3956 of 2008 on the file of the V Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The case of the appellant in CMA No.39 of 2014 Sriranjani is that on 26.05.2008 at about 15.30 hours when she was travelling in a bus from Chengalpattu to Cuddalore, the

bus stopped at Karukuzhi bus stop for alighting the passengers. At that time, a lorry bearing registration No.TN 46-C-7525 owned by one Abdul Samath was driven by one Ganesan in a rash and negligent manner with high speed and dashed against the bus which had stopped at the bus stop, due to which the appellant, who was sitting in the said bus has sustained grievous injuries. Since, the accident had occurred due to rash and negligent driving of the lorry driver, the appellant had filed a claim petition claiming Rs.6 lakhs as compensation.

3. The first respondent remained absent before the trial Court and therefore, he was set exparte before the Court below.

4. The second respondent had filed a counter denying all the averments and submitted that the driver of the bus did not possess any driving license to drive the vehicle involved in the alleged accident. It is further submitted that only as per the terms and condition of the policy, compensation can be awarded. It is also submitted that the Tamilnadu State Transportation Corporation bus bearing registration No.TN-2-N-2575 had abruptly applied sudden brake without showing any sign or indication, hence the lorry bearing registration No.TN-46-C-7525 dashed against the bus, inspite of the lorry driver applied the brake and thereby, the occupants of the said bus have sustained injuries. It is further submitted that the said accident had occurred due to careless act of the driver of the bus who had stopped the bus in the middle of the road and he is also equally responsible for causing the said accident and prayed for imposing negligence on the driver of the bus as well as the lorry driver. It is further submitted that the first respondent, owner of the vehicle was not co-operating in the case proceedings and has not furnished proper records. The claim made under various heads are highly excessive. Hence, prayed for dismissal of the petition.

5. The Court below after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded a sum of Rs.84,139.25 as compensation and the same has been rounded to Rs.84,150/-. Aggrieved over the same, the appellant has filed this appeal before this Court.

6. The learned counsel for the appellant in C.M.A.39 of 2014 submitted that though the appellant had suffered fracture in lateral wall of right orbit and head injuries, the Tribunal has awarded only Rs.5000/- for pain and suffering. Further, the learned counsel submitted that the Tribunal failed to consider the compensation for permanent disablement has to be awarded not only on the basis of the percentage of disablement but also depending upon the nature of injuries and the age of

the victim as well. It is further submitted that the appellant was a teacher and taking tuition and was earning a sum of Rs.6000/- per month at the time accident and she was treated as in-patient and out-patient for more than 6 months. However, the learned Tribunal awarded only Rs.6000/- for two months is not correct. Further, the compensation awarded for facial disfigurement, dress material damaged, transport to hospital and extra nourishment is on the lower side and the Tribunal has not awarded any compensation for attendants and loss of amenities. Hence, prayed for enhancement of compensation.

7. The learned counsel for the appellant in CMA.40 of 2014 submitted that the minor appellant suffered 15% partial and permanent disability, but the Trial Court did not consider the same. The Court mechanically awarded Rs.20,000/- under the heads of extra nourishment, pain and suffering and transportation, which is not correct. The trial Court ought to have considered injuries sustained by the minor appellant and also partial and permanent disability suffered by him. In any event, the lower Court awarding compensation of Rs.20,000/- as against the claim of Rs.1,00,000/- is unsustainable in law and the lower Court ought to have awarded the compensation as prayed for. Hence, prayed for enhancement of the compensation.

8. The learned counsel for the second respondent in both the appeals submitted that the accident has occurred due to the negligence on the part of the Government bus driver and he has not been impleaded as a party to the proceedings. It is further submitted that the said accident had occurred due to careless act of the driver of the bus, who had stopped the bus in the middle of the road and he is also equally responsible for causing the said accident. He further submitted the Tribunal after considering the evidence of the Doctor and documents submitted by the appellants has awarded just and reasonable compensation and prayed for dismissal of the appeals.

9. Heard the learned counsel for the appellants and the learned counsel for the second respondent, and perused the materials available on record.

10. It is the contention of the second respondent that the accident has occurred due to the negligence on the part of the Government bus driver. But they have not chosen to examine any other person or the bus driver as a party to the proceedings. In the absence of any material to disprove the contention of the appellant, the Court below had rightly fixed the responsibility on the driver of the lorry and liability has been fixed on the second respondent, who is the insurer of the vehicle to pay the same, as there is valid insurance

coverage for the said lorry in Cover Note No.645008 with validity from 05.10.2007 to 04.10.2008 and the accident occurred on 26.05.2008. Hence, the Court below has rightly fixed the liability on the second respondent, insurer to pay the compensation to the victims.

11. On a perusal of the documents regarding the treatment taken by the appellant, who was admitted in the Government Stanley Hospital, it is seen that the appellant was treated as an in-patient for 8 days from 26.05.2008 to 03.06.2008. On going through the medical certificate issued by the Doctor concerned and the nature of treatment given to the appellant in the hospital, it could be inferred that the injuries sustained by the appellant is grievous in nature. Even though no surgery has been performed, she has got head ache and sustained fracture of lateral wall of orbit on the right side and therefore assessed 10% for headache, 10% for post traumatic vertigo and 20% for sensory Ataxia. But the Court below considering the fracture of right side lateral wall of orbit, has rightly fixed the disability at 20%.

12. The appellant was working as a teacher in a private school and also taking private tuition at the relevant point of time. Considering the documents namely Ex.P.6 and Ex.P.7 certificates, the Court below has fixed loss of income at Rs.3000/- per month and awarded loss of income for two months, as sum of Rs.6000/-. In the absence of any material other than above certificates, this Court is of the view that the Court below awarding a sum of Rs.3000/- per month is appropriate and the Court below had rightly awarded two month loss of income as Rs.6000/-. Further, the doctor in his evidence, based on the disability certificate had deposed that the appellant has suffered 20% disability, who is aged only 20 years at the time of the accident. Considering the future of the appellant, under the head of disfigurement, the disability is fixed at 20% and for pain and suffering for disability of 20%, the Court below is right in awarding Rs.20,000/-. The Court below had further awarded a sum of Rs.5000/- for transport to hospital, for extra nourishment has awarded a sum of Rs.7000/-, for damages to clothes Rs.5000/-, for medical expenses Rs.639.25p and for disfigurement has awarded a sum of Rs.5000/-. The Tribunal, after considering the entire evidence has rightly awarded above sums under various heads on the said facts and circumstances and in the absence of any contra evidence produced by the respondent, this Court finds that the compensation awarded by the Tribunal is just and reasonable and this Court is not inclined to interfere with the Award of the Tribunal.

13. In C.M.A.No.40 of 2014, in the above accident, a minor Dinesh, who was travelling in the bus for going to school, also sustained injuries. At that point of time, he

was aged about 14 years. Even in the absence of any materials, we can presume that he is studying in IX Standard. Hence, the objection raised by the second respondent that there is no evidence to show that the boy was studying in IX Standard in any school cannot be accepted. The father of the minor was examined on behalf of his son, the appellant herein. He has deposed that his son could not continue his studies and he is suffering from head ache and he is not able to read continuously due to watering of his eyes.

14. The Doctor who has given disability certificate was examined as P.W.3. P.W.3 in his evidence has stated that he had assessed the disability at 15% and deposed that the minor sustained lacerated wound 4cm on both mandibular area and same was sutured and contusion on the left side of chest, therefore assessed 10% for headache and 5% for vertigo. Ex.P.11 is the disability certificate issued to the minor. Even though, the appellant has not sustained any fracture and no surgery was performed, he could not go to school carrying his school bag, which is weighing below 10 kilos. The Court below has awarded a sum of Rs.20,000/- as compensation and no amount has been awarded for pain and suffering and disfigurement and for extra nourishment. Considering the facts and circumstances of the case and age of the victim, this Court awards further sum of Rs.15,000/- for pain and suffering and disfigurement and a sum of Rs.5000/- for extra nourishment and the award amount is enhanced to Rs.40,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	--	15,000/-	enhanced
2.	Extra Nourishment	-	5,000/-	enhanced
	Total compensation	20,000/-	40,000/-	enhanced by Rs.20,000/-

15. In the result, this Civil Miscellaneous Appeal in C.M.A.No.39 of 2014 dismissed and C.M.A.No.40 of 2014 is partly allowed and compensation is enhanced to Rs.40,000/-. No costs.

16. Accordingly, the respondent insurance company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. In case, if

any amount has already been deposited by the second respondent insurance company, they can deposit only the remaining amount within the aforesaid period. After the entire amount has been deposited by the second respondent insurance company, the appellants/claimants can withdraw the same by filing a formal petition before the concerned Court. In case, if the second respondent has deposited any amount as per the award dated 19.06.2013 passed by the Court below, the appellants can withdraw the same from the Court below.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vrc

To

1.The Vth Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to M/s.N.M.Muthurajan, Advocate SR.103834

+2cc to Mr.P.G.Padmanabhan, Advocate SR.103393, 103394

C.M.A.Nos.39 and 40 of 2014

SJ(CO)
CB(03/09/2020)