

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2501 of 2013

Minor N. Dilipan rep by his Father & Next Friend
Mr. L. Natarajan ..Appellant/ Petitioner

Versus

Metropolitan Transport Corporation,
Chennai Division Limited,
Rep by its Managing Director,
Pallavan Salai,
Chennai - 600 002. ..Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 13.08.2012 made in M.C.O.P.No.3958 of 2008 on the file of the Motor Accident Claims Tribunal, V-Small Causes Court Judge, Chennai.

For Appellant : Mr. K. Varadha Kamaraj
For Respondent : Mr.S. Sivakumar

J U D G M E N T

This appeal has been filed by the appellant who is the claimant before the Tribunal against the Judgment and order in M.C.O.P. No.3958 of 2008 dated 13.08.2012 on the file of the Motor Accident Claims Tribunal, V-Small Causes Court Judge, Chennai.

2.The facts of the case briefly are as under:

On 20.08.2008 at about 8.30am, while the minor claimant/appellant herein was proceeding on Chetpet Over bridge, the respondent's bus bearing registration No.TN01 N 5482 ran over the left leg of the minor claimant/appellant herein due to rash and negligent driving of the driver of the state owned bus, thereby he has sustained grievous injuries and was treated as inpatient in the Government Kilpauk Medical College from 22.08.2008 to 27.11.2008 and thereafter underwent treatment at Bethany Health Care Centre wherein he was done surgery under treatment from 20.07.2009 to 31.07.2009. Due to the injuries in the accident, the claimant/appellant herein has filed claim petition before the Tribunal in M.C.O.P. No.3958 of 2008 claiming for compensation of Rs.15,00,000/- (Rupees Fifteen Lakh Only). However, the Tribunal has awarded

a compensation of Rs.4,48,500/- (Rupees Four Lakh Forty Eight Thousand and Five Hundred Only) as compensation to the claimant/appellant herein.

3. Being aggrieved over the aforesaid award, the minor claimant/appellant herein has preferred the present appeal seeking for enhancement of compensation.

4. The learned counsel for the appellant would submit that the Tribunal ought to have passed award of compensation as sought by the appellant after considering the difficulties and sufferings attained by the minor claimant in the accident. However, the Tribunal has awarded a meagre amount of compensation without taking into consideration that the appellant finds difficulty, in walking, climbing stairs and sitting cross legged at the tender age of 10 years. Hence, this Court may be pleased to award as sought by the appellant.

5. On the contrary, the learned counsel for the Transport Corporation would submit that the Tribunal has awarded the compensation in the aforesaid claim petition taking into consideration both oral and documentary evidences in a proper prospective which cannot be considered as meagre compensation. The appellant/claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard, the learned counsel for both sides and perused entire oral and documentary evidence placed before this Court.

7. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not dispute. The entitlement of the claimant/appellant herein is alone disputed seeking for enhancement of compensation after considering the sufferings and difficulties attained by the claimant/appellant herein in the accident in the age of 10 years since his left leg was ran over by state owned bus thereby the appellant cannot enjoy his happiest child wood age and also not able to active to participate in sports activities.

8. During the trial before the Tribunal, on the side of the appellant P.W.1 to P.W3 were examined and Ex.P1 to Ex.P9 were marked. R.W1 was examined and any documents were marked on the side of the respondent.

9. On perusal of the entire records, it is seen that as per the guidelines from the High Court and Supreme Court, the Tribunal has awarded compensation. The Transport Corporation failed to prove their contention that the minor claimant/appellant herein attempted to get in to the running bus and no documents were marked by the 2nd respondent to disprove the entitlement of the minor claimant/appellant herein.

10. Having considered the facts and circumstances of the case, this Court is not inclined to interfere with the award passed by the Tribunal under the heads of Transport, Nutrition, Medical Expenses and loss of amenities except Loss of Studies, Pain and sufferings, loss of earning capacity and being to be added attendant charges since the minor claimant/appellant who was at the age of 10 years studying VIth Standard, has sustained injuries and fracture in his left leg, he would not have continued his studies during the period of treatment; he should have been taken care by family members; he would have attained more sufferings and difficulties to do his daily activities. Hence, taking into consideration the aforesaid aspect, this Court is inclined to modify the loss of earning capacity fixing his notional monthly income as Rs.4,500/- instead of Rs.3,000/- as fixed by the Tribunal. Accordingly, the compensation of other heads is modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Transport	15,000.00
2	Nutrition	15,000.00
3	Medical Expenses	9,482.00
4	Loss of Studies	10,000.00
5	Loss of amenities	40,000.00
6	Pain and sufferings	50,000.00
7	Loss of earning capacity (4500X12X15X60%)	4,86,000.00
8	Attendant Charges	10,000.00
Total Amount		To 6,35,482.00

11. Thus, the minor claimant/appellant herein is awarded compensation of Rs.6,35,482/- and rounded off to Rs.6,35,500/- along with interest @ 7.5% p.a. from the date of petition till the date of deposit. The Transport Corporation is directed to deposit the aforesaid award amount in any nationalized bank till he attained majority within a period of four weeks from the date of receipt of copy of this order after deducting the deposited amount if any. The father of the minor is entitled to withdraw the accrued interest quarterly for the expenses of minor. In case the appellant now has attained majority, he is entitled to withdraw the entire award amount.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.3958 of 2008 dated 13.08.2012. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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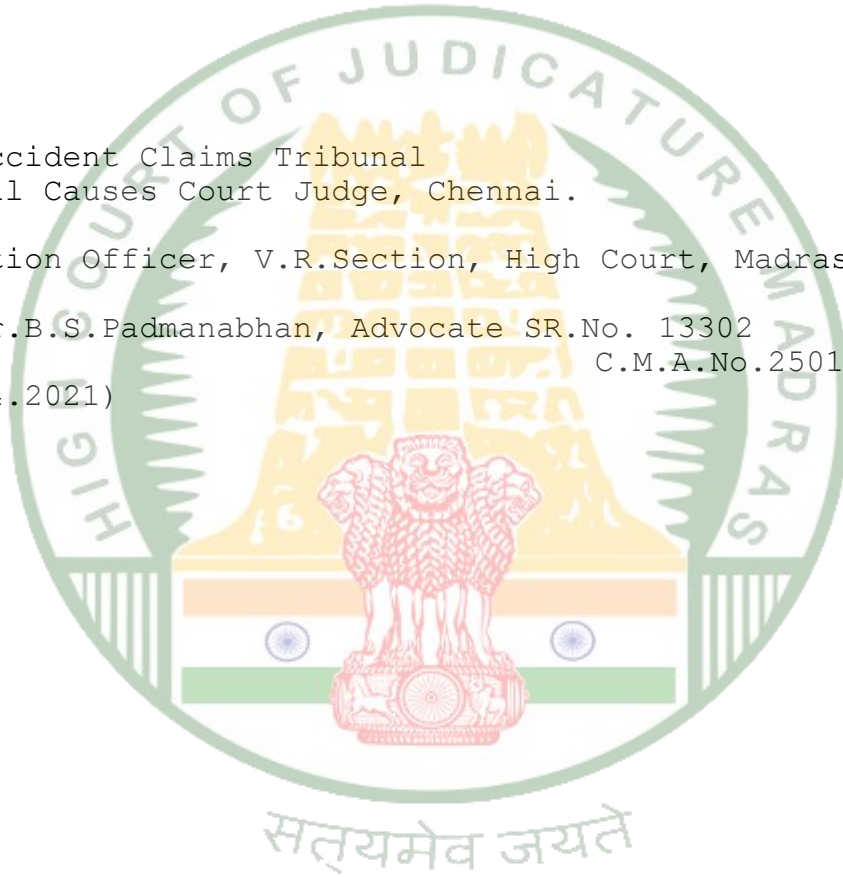
To

1.Motor Accident Claims Tribunal
V-Small Causes Court Judge, Chennai.

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

+1cc to Mr.B.S.Padmanabhan, Advocate SR.No. 13302
C.M.A.No.2501 of 2013

A.SK(21.04.2021)



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