

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3417 of 2013

B.Jeevitha (minor)

Represented by her father and next friend

K.Bashkar

.. Appellant/Petitioner

Vs.

The Managing Director

Metropolitan Transport Corporation Ltd.

Anna salai, Chennai-600 002. ... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2011 made in M.C.O.P.No.4321 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 20.10.2011 made in M.C.O.P.No.4321 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chennai.

2.The appellant is claimant in M.C.O.P.No.4321 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chennai. The minor representing by her father filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 18.11.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent/Transport Corporation to pay a sum of Rs.85,525/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant suffered severe head injury, fracture in left parietal bone, traumatic seizures, suffered bleeding in the right ear, injuries in scalp, chest and multiple injuries all over the body. She has taken treatment as in-patient in the hospital for three days and continued her treatment as out-patient. At the time of accident, the appellant was aged 12 years and suffered more pain due to the injuries. She was attended by her family members during treatment period both as in-patient and out-patient. The Tribunal has erroneously granted lesser amount towards pain and suffering and medical expenses. The Tribunal has not awarded any amount towards transportation, attendant charges and loss of income and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that in the accident, the appellant suffered only minor injuries. C.T. scan report produced by the appellant shows that her brain is normal. P.W.2/Doctor contrary to the medical report, assessed the disability excessively alleged to have suffered by the appellant. The Tribunal considering the materials placed before it, awarded compensation, which are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the entire materials on record.

8.From the materials available on record, it is seen that the appellant, who was a minor at the time of accident, suffered head injury and other injuries in the accident. She was treated as in-patient in Aysha Hospital, Kilpauk, Chennai, from 18.11.2009 to 20.11.2009 and continued her treatment as out-patient. She has produced Ex.P3/Discharge summary, Ex.P4/Medical bills and Ex.P5/O.P. treatment prescription to substantiate her contention. P.W.2/Doctor examined the appellant and assessed that the appellant suffered 45% disability. The respondent did not let in any evidence to disprove the evidence of

P.W.2/Doctor. The Tribunal accepted the percentage of disability assessed by P.W.2/Doctor and awarded compensation for 45% disability at the rate of Rs.1,000/- per percentage of disability, which is meagre. The accident is of the year 2009 and hence, the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,35,000/- (Rs.3,000/- X 45%).

8(i).According to the appellant, she has taken treatment as in-patient in Aysha Hospital, Kilpauk, Chennai, from 18.11.2009 to 20.11.2009 and continued her treatment as out-patient. She was aged 12 years at the time of accident. The Tribunal has not awarded any amount towards attendant charges, extra nourishment, loss of amenities and damage to clothes. Considering the age, nature of injuries, disability and period of treatment taken by the appellant, Rs.7,500/- each is awarded towards attendant charges and extra nourishment, Rs.15,000/- and Rs.1,500/- are awarded towards loss of amenities and damage to clothes respectively. The appellant has claimed a sum of Rs.35,000/- towards medical expenses. The Tribunal considering Ex.P4/Medical bills, awarded a sum of Rs.20,525/- towards medical expenses, which is proper. Hence, the appellant is not entitled to any enhancement towards medical expenses. The appellant would have spent some amount towards transportation during the period of treatment. The Tribunal has not awarded any amount towards transportation. Therefore, a sum of Rs.5,000/- is awarded towards transportation. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Disability	45,000	1,35,000	Enhanced
2.	Medical expenses	20,525	20,525	Confirmed
3.	Pain and suffering	20,000	20,000	Confirmed

4.	Attendant charges	-	7,500	Granted
5.	Extra nourishment	-	7,500	Granted
6.	Loss of amenities	-	15,000	Granted
7.	Damage to clothes	-	1,500	Granted
8.	Transportation	-	5,000	Granted
	Total	85,525	2,12,025	Enhanced by Rs.1,26,500/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.85,525/- is hereby enhanced to Rs.2,12,025/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the award of the minor appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The father of the minor appellant viz., K.Bashkar, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
The Motor Accident Claims Tribunal
Fast Track Court No.I, Chennai.

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

+1 cc to Mr.Muthuvisakan, Advocate Sr.No. 35404

C.M.A.No.3417 of 2013

MG (CO)
RMP (05/05/2021)



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