

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3458 of 2019

Sarveshvigram(12)
S/o.Murugesan
Residing at D.No.5/354,
Kadhiboard Colony,
Chinnamuthalaipatty,
Namakkal District. ...Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Division-1, Head Office,
Kumbakonam. ...Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree in MCOP.No.7 of 2009 dated 08.05.2019 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The present Civil Miscellaneous Appeal is filed against the judgment and decree dated 08.05.2019 passed in M.A.C.T.O.P.No.7 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

2. The learned counsel appearing on behalf of the appellant / Claimant mainly contended that the award of compensation is inadequate and not in commensuration with the nature of injury sustained by the claimant. The accident occurred on account of the rash and negligent act of the Driver of the Tamil Nadu State Transport Corporation and the Tribunal erroneously fixed 10% contributory negligence against the claimant and awarded a lesser amount as compensation and therefore, the claimant has

chosen to file the present appeal, seeking enhancement of compensation.

3. At the time of accident, the claimant was studying VI Standard and was aged about 12 years. The accident occurred on 31.01.2007 and the claimant, who was a Minor, at that point of time, sustained grievous crush injuries and lacerated injuries all over his body. He was admitted in Arvind Hospital at Namakkal initially and thereafter shifted to Ganga Medical Centre & Hospital at Coimbatore for further treatment and this apart, he had taken treatment as inpatient from 02.02.2017 to 20.02.2017 (19 days). Again, he was admitted in the Hospital for further treatment as inpatient from 18.05.2009 to 25.05.2009. He underwent multiple surgeries. The Discharge Summary was marked as Ex.P3 and Ex.P4 and the Medical Bills for a sum of Rs.99,489.25/- was submitted, which was marked as Ex.P5. The Ganga Hospital Medical Board Doctors examined as PW2 and he has deposed, stating that the permanent disability is 40%. The Disability Certificate was marked as Ex.P12.

4. Under these circumstances, the award of the Tribunal deserves to be enhanced.

5. The learned counsel appearing on behalf of the respondent Transport Corporation disputed the contentions raised by the appellant by stating that the claimant was a Minor at the time of accident and was aged about 12 years, studying in VI Standard. The accident occurred in the year 2007 and the Minor/claimant was also contributed for the accident. Thus, the Tribunal fixed contributory negligence on the claimant also.

6. This apart, the Tribunal considered all these aspects and awarded a sum of Rs.3,000/- per disability. 40% disability was accepted by the Tribunal and accordingly, Rs.1,20,000/- [40*3000=120000] (Rupees One Lakh Twenty Thousand) was awarded as compensation for the permanent disability of 40%. A sum of Rs.5,000/- was fixed as Transport charges and the Medical Bills were also granted. For Pain and Suffering, a sum of Rs.65,000/- was granted and a sum of Rs.9,000/- was granted for the Assistant. Therefore, no further enhancement is to be granted and the appeal is liable to be dismissed.

7. This Court is of the considered opinion that with reference to the issues framed, the Tribunal considered the documents as well as the evidences and arrived a conclusion that the claimant also committed an act of contributory negligence and fixed 10% contributory negligence. This apart, the findings of the Tribunal reveals that the claimant was travelling in a two wheeler and his mother was riding the two wheeler.

8. Under these circumstances, this Court do not find any perversity in respect of the conclusion arrived with reference to the issues regarding negligence. As far as the quantum of compensation is concerned, the claimant was a school student at the time of accident and was aged about 12 years. The 40% permanent disability fixed by the Doctor was accepted by the Tribunal and a sum of Rs.3,000/- per disability was calculated. Medical Bills were granted and a sum of Rs.65,000/- for Pain and Suffering was also granted.

9. Looking into the quantum of compensation granted by the Tribunal and considering the age factor and the nature of injury, this Court is of the considered opinion that no enhancement is to be granted and the total compensation of a sum of Rs.2,82,800/- (Rupees Two Lakh Eighty Two Thousand and Eight Hundred only) awarded for the injury sustained by the claimant is just and proper.

10. Thus, this Court is not inclined to consider the appeal and accordingly, the judgment and decree dated 08.05.2019 passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.7 of 2009 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.3458 of 2019 stands dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Kak
To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

C.M.A.No.3458 of 2019

WEB COPY

pvs (co)
aa05/01/2021