



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.223 of 2009

Minor Annupallavi
(Minor represented through
her father and next guardian
Asok Raj)

: Petitioner/Appellant

Vs.

Tamil Nadu State Transport
Corporation Limited,
(Madurai Division II),
Vannarapettai,
through its Managing Director,
Tirunelveli-627 003.

: Respondent/Respondent

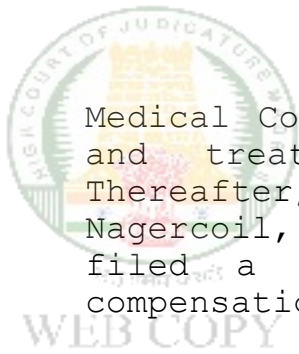
PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.929 of 2002, dated 18.02.2004 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.II), Tirunelveli.

For Appellant : Mr.T.Selvakumaran
For Respondent : Mr.M.Prakash

JUDGMENT

Being dissatisfied with the quantum awarded by the Motor Accident Claims Tribunal (Fast Track Court No.II), Tirunelveli, in M.C.O.P.No.929 of 2002 dated 18.02.2004, the claimant as appellant has filed this appeal seeking enhancement of compensation.

2. The case of the claimant is that on 04.03.2002 at about 08.20 a.m., she was standing in the R.S.Bus stop on the Northern extreme side of the Ambasamudram-Papanasam Main Road. At that time, a bus bearing registration No.TN-72-N-0865 belonging to the respondent came from west to east in a high speed rashly and negligently dashed against the claimant. In the impact, the claimant sustained fracture over the right shoulder, injuries over her right ear, head, right hand, both legs and all over the body. Immediately, after the accident, she was taken to Ambasamudram Government Hospital and thereafter, she was referred to Tirunelveli



Medical College Hospital at Palayamkottai, where, she was admitted and treated as inpatient from 04.03.2002 and 05.03.2002. Thereafter, the claimant was shifted to Thiraviam Hospital at Nagercoil, where the petitioner was inpatient for 20 days. Hence, he filed a claim petition claiming a sum of Rs.4,00,000/- as compensation.

3.The respondent/Insurance Company resisted the claim disputing the manner of the accident, age, avocation and their liability to pay the compensation.

4. Before the Tribunal, the claimant in order to substantiate her case, examined two witnesses and marked Exs.P1 to P11. On the side of the respondent one witness was examined and no document was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the bus and awarded compensation of Rs.76,000/- along with interest @ 9% p.a.

6.The learned counsel for the appellant would submit that the claimant was 15 years old and was studying 10th standard at the time of accident and he has suffered functional disability and she is unable to do her day-to-day activities as she was doing before the accident, but the tribunal without taking into consideration the above aspect and the nature of the injuries sustained by the claimant, has awarded lesser compensation.

7. On the other hand, the learned Counsel appearing for the respondent/Insurance Company submitted that the Tribunal considering the nature of the injuries sustained by the appellant/claimant and the treatment taken by him, has awarded just compensation and hence, he prays for the dismissal of this Civil Miscellaneous Appeal.

8.Heard **Mr.T.Selvakumaran**, learned counsel for the appellant and **Mr.M.Prakash**, learned counsel for the respondent and perused the materials available on record.

9. In the case on hand, the claimant, who examined himself as P.W.1 has stated that on 04.03.2002 at about 08.30 hours she was standing in the R.S.Bus stop on the Northern extreme side of the Ambasamudram-Papanasam Main Road. At that time, a bus bearing registration No.TN-72-N-0865 belonging to the respondent came from west to east in a high speed rashly and negligently dashed against the claimant. Due to impact, she sustained fracture over the right shoulder, injuries over her right ear, head, right hand, both legs and all over the body. Immediately, after the accident, she was taken to Ambasamudram Government Hospital and thereafter, she was



referred to Tirunelveli Medical College Hospital at Palayamkottai, where, she was admitted and treated as inpatient from 04.03.2002 and 05.03.2002. Thereafter, she was shifted to Thiraviam Hospital at Nagercoil, where the petitioner was inpatient for 20 days. In support of the evidence of P.W.1-claimant, Ex.P1-FIR, Ex.P2-Accident Register, Ex.P3 Medical receipts for taking treatment, Ex.P4 Scan Report, Ex.P5 Certificate for studying 10th standard, were marked. P.W.2 Dr.S.Ramaguru has given evidence stating that the claimant has sustained 54% permanent disability and also produced Ex.B9 disability certificate. But the Tribunal has taken the disability at 24% based on the evidence of P.W.2 and the Accident Register Ex.P.2.

10. Considering the facts and circumstances of the case, the Tribunal has awarded a sum of **Rs.10,000/-** towards future prospects, Rs.24,000/- for permanent disability, Rs.5,000/- towards pain and suffering, Rs.35,000/- towards medical expenses, Rs.2,000/- towards extra nourishment.

11.It is seen that the Tribunal has awarded a sum of Rs.24,000/- towards permanent disability, by applying Rs.1,000/- per percentage and as per the decisions of this court, the claimant is entitled for Rs.2,000/- for per Percentage. By applying Rs.2,000/- for one percentage of disability, Rs.48,000/- (24 x Rs.2,000/-) awarded towards permanent disability. The award under the head of conventional damages, in our opinion, is very low and they have to be enhanced. The Tribunal has not awarded any compensation towards transportation and attendant charges, so under the head a sum of **Rs.12,000/-** is awarded. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability(24%) (24%x2,000)	24,000	48,000	enhanced
2.	For pain and sufferings	5,000	10,000	enhanced
3.	For extra nourishment	2,000	5,000	enhanced
4.	For transportation and attendant charges	-	12,000	awarded



5.	For future prospects	10,000	10,000	confirmed
6.	For Medical expenses	35,000	35,000	confirmed
	Total	Rs.76,000	Rs.1,20,000/-	By enhancing a sum of Rs.44,000/-

12.In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.76,000/- to a sum of **Rs.1,20,000/-** . **The award amount of the Tribunal shall carry interest at the rate of 9% per annum and the enhanced award amount shall carry interest at the rate of 6% p.a.,** from the date of petition till date of realization with proportionate costs. The respondent shall deposit the enhanced award amount with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. The Tribunal shall deposit the share of the minor claimant in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and renewable thereafter, till the minor attains majority. The father of the minor claimant is permitted to withdraw the accrued interest once in three months directly from the bank. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judge,
The Motor Accident Claims Tribunal
(Fast Track Court No.II), Tirunelveli.



2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

+1 CC to M/s.M.PRAKASH, Advocate (SR-25084[F] dated 11/12/2020)

+1 CC to M/s.T.SELVA KUMARAN, Advocate (SR-25053[F] dated 11/12/2020)

C.M.A(MD)No.223 of 2009

09.12.2020

KMV(CO)

NR (30/12/2020) 5P : 6C