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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2022

DATED: 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA Nos. 352, 356, 496 & 497 of 2018

C.M.A.No. 352 of 2018:

Minor Gogulraj ... Appellant/Petitioner
Vs

1. Tamil Nadu State Transport Corporation Limited
No.12, Ramakrishna Main Road, Salem -7.
2. N.Chinnusamy
3. National Insurance Company Ltd.,
D.O.Balaji Towers, 2nd Floor, No.11,
Ramakrishna Road, Salem -7. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No. 19 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, dated 23.12.2016 and for enhancement of compensation.

C.M.A.No. 356 of 2018:

Jayalakshmi ... Appellant/Petitioner
Vs

1. N.Chinnusamy
2. National Insurance Company Ltd.,
D.O.Balaji Towers, 2nd Floor, No.11,
Ramakrishna Road, Salem -7.
3. Tamil Nadu State Transport Corporation Limited
No.12, Ramakrishna Main Road, Salem -7.

(Notice to R1 and R3 may be dispensed with for the time being and separate petition has been filed for the same)
... Respondents/Respondents



Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No. 2456 of 2010 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, dated 23.12.2016 and for enhancement of compensation.

C.M.A.No. 496 of 2018:

K.Sudanthira Vanitha

... Appellant/Petitioner

Vs

1. Tamil Nadu State Transport Corporation Limited
No.12, Ramakrishna Main Road, Salem -7.
2. N.Chinnusamy
3. National Insurance Company Ltd.,
D.O.Balaji Towers, 2nd Floor, No.11,
Ramakrishna Road, Salem -7. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No. 20 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, dated 23.12.2016 and for enhancement of compensation.

C.M.A.No. 497 of 2018:

Valarmathi

... Appellant/Petitioner

Vs

1. Tamil Nadu State Transport Corporation Limited
No.12, Ramakrishna Main Road, Salem -7.
2. N.Chinnusamy
3. National Insurance Company Ltd.,
D.O.Balaji Towers, 2nd Floor, No.11,
Ramakrishna Road, Salem -7. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No. 40 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, dated 23.12.2016 and for enhancement of compensation.



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For Appellant in
all C.M.As. : Mr. C.Kulanthaivel

For 1st Respondent
in CMA Nos. 352, 496 & 497/18
3rd Respondent in CMA.No.
356/18 : Mr. A.Sundaravadhanam

For 2nd Respondent in
C.M.A.No. 356 of 2018 : No appearance

For 3rd Respondent in
CMA Nos. 352, 496 & 497/18
2nd Respondent in CMA No.
356/18 : Ms. N.B.Surekha

For 1st Respondent in
C.M.A.No. 356/2018 : No appearance

C O M M O N J U D G M E N T

All the four Civil Miscellaneous Appeals arise out of a common Judgment delivered in 21 Motor Accident Claims Original Petitions filed before the District Court, Salem / Motor Accident Claims Tribunal with respect to one single accident. Two persons unfortunately died in the accident and several others including the 21 petitioners had suffered injuries.

2. Aggrieved by the quantum and compensation granted in four of the Motor Accident Claims Original Petitions, the present Civil Miscellaneous Appeals have been filed.

3. C.M.A.No. 352 of 2018 had been filed against the compensation granted in M.C.O.P.No. 19 of 2011. C.M.A.No. 356 of 2018 had been filed against the compensation granted in M.C.O.P.No. 2456 of 2010. C.M.A.No. 496 of 2018 had been filed against the compensation granted in M.C.O.P.No. 20 of 2011. C.M.A.No. 497 of 2018 had been filed against the compensation granted in M.C.O.P.No. 40 of 2012.

4. The District Court, Salem, Motor Accident Claims Tribunal, by Judgment dated 23.12.2016 had disposed of all 21 Motor Accident Claims Original Petitions by a common Judgment.

5. All the claimants were passengers in a Government Transport Bus bearing Registration No. KA-30/N 0637 proceeding from Omalur to Tharamangalam on 28.09.2010. When the bus was near Auttukuramur turning from Omalur to Tharamangalam main



road, at around 5 p.m., in the evening in the opposite direction, a Lorry bearing Registration No. KA-01-AB-5997 carrying load of cotton bales had come in a rash and negligent manner and had dashed against the bus and the right portion of the bus was damaged and about 40 passengers, who were sitting on the right portion suffered grievous and simple injuries. Two passengers died on the spot.

6. In this connection, FIR in Cr.No. 866 of 2010 had been registered by the Omalur Police Station under Sections 279, 337, 338 and 304-A IPC against the driver of the Lorry.

7. During the course of trial in the 21 connected cases, the Tribunal had examined 32 witnesses as PW-1 to PW-32 and had also examined four witnesses on the side of the respondents as RW-1 to RW-4. On the side of the petitioners, Exs. P-1 to P-107 had been marked and on the side of the respondents, Exs. R-1 to R-8 had been marked. As Court documents, Exs. X-1 to X-4 had been marked. Finally, by common Judgment dated 23.12.2016, compensation was granted to the injured and also to the legal representatives of the deceased. In these four appeals, this Court is concerned only with the compensation granted in the aforementioned four Motor Accident Claims Original Petitions.

C.M.A.No. 352 of 2018 against M.C.O.P.No. 19 of 2011:

8. The claimant was a minor boy Gogulraj, who was aged 11 years. The nature of injuries suffered by him were as follows:-

“fracture of the right frontal bone
with adjacent frontal parenchyma contusion.”

9. He was a school student. The percentage of disability assessed by PW-20 Dr. S.P.Mariappan was 45% and he had issued disability certificate Ex.P-81. He was in hospital for 21 days from 28.09.2010 to 17.10.2010. He had made a total claim of Rs.6,00,000/- and the Tribunal had awarded a sum of Rs.1,63,510/-. Seeking enhancement of compensation, the present Appeal had been filed.

10. It had been urged by the learned counsel for the appellant Mr.C.Kulanthaivel that PW-20 Doctor had deposed that there was a lengthy scar on the front right side head showing the disfigurement. It was claimed that he also suffered from epilepsy and loss of memory and also suffered frequent headaches and giddiness. It was also stated that he was not able to concentrate in his studies and was not able to walk in a straight line.

11. The learned counsel placed reliance on the Judgment



12. On the other hand, it is the contention of Ms. N.B.Surekha, learned counsel for the third respondent that no document had been produced to show that the injured had sustained future complications. She also contended that there was no evidence that he had stopped his studies. It was also stated that the Doctor, who gave the disability certificate was not the Doctor, who treated the claimant. It was however stated that no compensation had been granted under the heads pain and suffering and attender charges.

14. In Master Mallikarjun referred supra, the Hon'ble Supreme Court had determined a notional lumpsum compensation for 45% permanent disability at Rs.4,00,000/-.

16. The Tribunal had granted medical expenses of Rs.63,510/-, which I would retain. With respect to pain and suffering, I would grant a sum of Rs.20,000/- and also grant a sum of Rs.5,000/- for attender charges. The compensation now granted would be as follows:-

(i) Notional Compensation:	Rs.4,00,000/-
(ii) pain and suffering :	Rs. 20,000/-
(iii) Medical expenses :	Rs. 63,510/-
(iv) attender charges :	Rs. 5,000/-

Total	Rs. 4,88,510/-

<https://hcservices.ecourts.gov.in/hcservices/>



18. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, if the appellant/claimant had attained the age of majority, is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. If he had not attained the age of majority, then his natural guardian can withdraw the accrued interest once every four months.

C.M.A.No. 356 of 2018 against M.C.O.P.No. 2456 of 2010:

19. The claimant was aged about 41 years and was a Tailor and Insurance Agent. The nature of the injuries suffered were as follows:-

- "1. Head Injury,
2. Fracture right maxilla lateral wall, nasal bone,
3. Communitated displaced fracture shaft of right femur,
4. Fracture spinous process of C3 C4 C5 and C7 Vertebra,
5. Displaced fracture right clavicle,
6. Undisplaced fracture bilateral scapula,
7. Fractures of spinous in D1, D2 and D3,
8. Right transverse fracture of L1 L2 and L3
9. Right hand fracture shaft of 3rd MC,
10. Compound Dislocation MCP Joint Right Index Finger with Neuro Vascular Bundle cut."

20. The percentage of disability had assessed at 60% by PW-29 Dr.Srinivasan and he had issued disability certificate Ex.P-99 and at 40% by PW-32 Dr. Shanmugasundaram and he had issued disability certificate Ex.P-105. The claimant had taken treatment as inpatient for 48 days and also underwent surgery. She claimed that she earned a sum of Rs.20,000/- per month. She claimed a sum of Rs.20,00,000/- lakhs but the Tribunal awarded a sum of Rs.9,44,170/-.

21. Questioning that grant, the appeal has been filed. It had been contended by the learned counsel for the appellant



by pointing out the nature of the injuries suffered that 60% disability should have been taken into consideration and since she had lost the eye sight in her right eye, permanent disability of 40% for loss of eye sight should have been taken into consideration. She was also a Tailor and insurance agent and has now been reduced to vegetative status and cannot do any other work. It was therefore stated that the multiplier method must be adopted.

22. The learned counsel for the respondent stated that the claimant had been in hospital for 58 days and there was no proof for the income. It was stated that the notional income could be determined at Rs.9,000/-. It was stated that 50% disability for the whole body can be taken into consideration.

23. I have carefully considered the rival submissions.

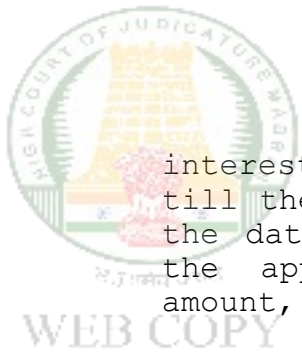
24. With respect to the income, I would determine the monthly income at Rs.9,000/-. It is only appropriate that 25% is granted towards future prospectus. This would indicate the monthly income would be Rs.11,250/-. If I were to take the disability at 60% for the whole body and adopt a multiplier of '14', the loss of earning power would be Rs.11,34,000/- [11,250 x 12 x 14 x 60 /100]. The Tribunal had granted a sum of Rs.7,76,403/- towards medical bills, which can be retained. The Tribunal had granted a sum of Rs.10,000/- towards nutrition which I would retain. I would also grant a sum of Rs.50,000/- towards pain and suffering, a sum of Rs.10,000/- towards transport, a sum of Rs.15,000/- towards attender charges, a sum of Rs.20,000/- towards future medical expenses and a sum of Rs.15,000/- towards loss of amenities. The compensation now granted would be as follows:-

(i) Loss of earning power:	Rs.11,34,000/-
(ii) pain and suffering :	Rs. 50,000/-
(iii) Medical expenses :	Rs. 7,76,403/-
(iv) attender charges :	Rs. 15,000/-
(v) Nutrition :	Rs. 10,000/-
(vi) Transport :	Rs. 10,000/-
(vii) Future Medical expenses:	Rs. 15,000/-

Total	Rs. 20,10,403/-

25. In fine, the Appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs.20,10,403/-.

26. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with



interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

C.M.A.No. 496 of 2018 against M.C.O.P.No. 20 of 2011:

27. The claimant K.Sudanthira Vanitha was aged 19 years and was a Tuition Teacher. She had suffered the following injuries:-

"Fracture maxilla left, fracture mandible left and fracture nasal bone and loss of 8 teeth in upper jaw.

28. The percentage of disability had been assessed at 45% by PW-25, Dental Surgeon who had issued disability certificate Ex.p-86 and had 26% as assessed by PW-31 (ENT) specialist who had issued disability certificate Ex.P-102. She took treatment for 9 days. She claimed a total income of Rs.5,000/- per month. She claimed a sum of Rs.6,00,000/- lakhs, but the Tribunal had awarded a sum of Rs.1,51,080/-.

29. The learned counsel for the appellant pointed out that at the young age of 19 years, the face of the appellant had been disfigured and there is deformity to be borne. She is unable to chew food properly. She is not able to speak properly. Her teeth function are restricted. The scar however is visible. The learned counsel also stated that she has reduced smell power and increased pain over the nose. She was a teacher and taking tuition.

30. The learned counsel for the respondent on the other hand stated that she had been hospitalised from 11.10.2010 whereas the accident took place on 28.09.2010. It was pointed out that there no document had been produced to show that she had taken treatment at any other place. It was further stated that the Doctor, who determined the disability was not the Doctor, who treated her. It was stated that the compensation granted was reasonable.

31. Having considered the facts, I would grant a sum of Rs.2,000/- per percentage of disability and determine, the disability at 30% owing to the loss of teeth and more importantly owing to the disfigurement in the face. This would mean that the loss of earning power would be Rs.60,000/- [2,000 x 30]. I would further grant a sum of Rs.44,080/- towards medical bills, which can be retained. I would grant a sum of Rs.20,000/- towards extra nourishment, a sum of Rs.30,000/-



towards pain and suffering, a sum of Rs.10,000/- towards transport expenses, a sum of Rs.10,000/- towards loss of amenities and discomfort, a sum of Rs.45,000/- towards loss of teeth injury, a sum of Rs.10,000/- towards future medical expenses. The compensation now granted would be as follows:-

(i) Loss of earning power:	Rs.	60,000/-
(ii) pain and suffering :	Rs.	30,000/-
(iii) Medical expenses :	Rs.	44,080/-
(iv) Extra nourishment :	Rs.	20,000/-
(v) Loss of amenities and discomfort :	Rs.	10,000/-
(vi) Transport :	Rs.	10,000/-
(vii) Future Medical expenses:	Rs.	10,000/-
(viii) Loss of teeth injury:	Rs.	45,000/-

Total	Rs.	2,29,080/-

32. In fine, the Appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs.2,29,080/-.

33. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

C.M.A.No. 497 of 2018 against M.C.O.P.No. 40 of 2011:

34. The claimant Valarmathi was aged 30 years and was a Tailoring and Tailoring Supervisor. She had suffered the following injuries:-

"Left acromio clavicular joint
subluxation in the left shoulder..

35. The percentage of disability had assessed at 29% by PW-22 Srinivasan who had issued disability certificate Ex.P-84. She was in hospital for 5 days. She claimed that she earned a sum of Rs.10,000/- per month. She claimed a sum of Rs.5,00,000/-, but the Tribunal awarded a sum of Rs.64,550/-.

36. The learned counsel for the appellant stated that there was difficulty to lift the left hand and in lifting any weight and in doing normal functions. It was stated that her left shoulder was mal united.



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37. The learned counsel for the respondent however stated that no document produced to show that she had suffered such future complications. The Doctor, who gave the disability certificate was not the Doctor who had given her treatment.

38. After having considering the rival arguments, I would grant the following compensation:-

I would determine the disability at 29% and grant a sum of Rs.2,000/- per percentage $[2,000 \times 29] = \text{Rs.}58,000/-$ and grant a sum of Rs.6,550/- towards medical expenses. I would also grant a sum of Rs.20,000/- towards pain and suffering and a sum of Rs.5,000/- towards transport expenses. I would also grant a sum of Rs.10,000/- towards nutrition expenses. The compensation now granted would be as follows:-

(i) 29% Disability	
[2,000 x 29]	: Rs. 58,000/-
(ii) pain and suffering :	Rs. 20,000/-
(iii) Medical expenses :	Rs. 6,550/-
(iv) Transport expenses :	Rs. 5,000/-
(v) Nutrition :	Rs. 10,000/-

Total	Rs. 99,550/-

39. In fine, the Appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs. 99,550/-.

40. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

41. In the result:-

(1) C.M.A.No. 352 of 2018 is allowed. The award is modified. The compensation award is enhanced to Rs.4,88,510/-. The order dated 23.12.2016 made in M.C.O.P.No. 19 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, is set aside;

(2) C.M.A.No. 356 of 2018 is allowed. The award is modified. The compensation award is enhanced to Rs.20,10,403/-. The order dated 23.12.2016 made in M.C.O.P.No. 2456 of 2010 on



the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, is set aside;

(3) C.M.A.No. 496 of 2018 is allowed. The award is modified. The compensation award is enhanced to Rs.2,29,080/-. The order dated 23.12.2016 made in M.C.O.P.No. 20 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, is set aside; and

(4) C.M.A.No. 497 of 2018 is allowed. The award is modified. The compensation award is enhanced to Rs. 99,550/-. The order dated 23.12.2016 made in M.C.O.P.No. 40 of 2011 on the file of the Motor Accident Claims Tribunal cum Special District Court, Salem, is set aside;

(5) No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To

1. Special District Court
Motor Accident Claims Tribunal, Salem.

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

+4cc to M/s.N.B.Surekha, Advocate, S.R.No.28787 to 28790

CMA Nos. 352, 356, 496 & 497 of 2018

CNR(CO)
SB(02/06/2022)