



C.M.A(MD)No.1122 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.11.2022

PRONOUNCED ON:02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1122 of 2021

Minor.Sakthi
represented through his father
and natural guardian
Mr.Balamurugan.

: Appellant / Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai.

: Respondent / Respondent

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2021 passed in M.C.O.P.No.49 of 2018, on the file of the Motor Accident Claims Tribunal/Sub Court, Aruppukottai.



C.M.A(MD)No.1122 of 2021

For Appellant : Mr.I.Suthakaran

For Respondent :Mr.K.Sudalayandi

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.49 of 2018, dated 28.04.2021, on the file of the Motor Accident Claims Tribunal/Sub Court, Aruppukottai.

2. The appellant/claimant, who was awarded with the compensation of Rs.6,23,413/- with interest at 7.5%p.a., for the disability suffered by him due to an accident occurred on 04.02.2018, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. During trial, on the side of the claimant, the father and the mother of the minor claimant were examined as P.W.1 and P.W.2 and 14 documents have been exhibited as Exs.P.1 to P.14. The respondent Transport Corporation has examined its conductor as R.W.1 and not adduced any documentary evidence. The disability certificate of the



C.M.A(MD)No.1122 of 2021

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claimant was marked as Ex.C.1. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 28.04.2021, holding that the accident was occurred only due to the rash and negligent driving of the driver of the bus belonging to the respondent and directed the respondent – Transport Corporation to pay the compensation of Rs.6,23,413/- with interest and costs. Aggrieved by the said award, the claimant has come forward with the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

4. The points that arise for consideration are

(1) Whether the Tribunal erred in determining the compensation at Rs.6,23,413/-, despite showing that the injured had amputation of his left leg below knee, which was assessed as permanent disability of 60% and that the claimant was 4 years old at the time of accident?

(2) Whether the compensation awarded by the Tribunal is just and proper and in accordance with law?

Points 1 and 2:



C.M.A(MD)No.1122 of 2021

WEB COPY

5. The case of the claimant is that due to the accident, he had a crush injury below the left knee with bone injury and injuries on his right ankle and other parts of his body, that the claimant was immediately taken to Government Hospital, Aruppukottai and thereafter taken to Amar hospital, Aruppukottai for further treatment, that a portion below the knee was amputated, that thereafter he was treated at Madurai Institute of Orthopaedics and Traumatology, and that the Medical Board attached to the Government Headquarters Hospital, Virudhunagar, after the examination of the claimant, has assessed the permanent disability at 60%. It is evident from Ex.C.1 – Disability Certificate that the claimant had amputation at the level of below knee lower 1/3rd of leg, which attracts 60% disability. It is evident from the medical records that the claimant had below knee amputation. Admittedly, the claimant was aged about 4 years at the time of accident. Considering the above, the Tribunal has rightly adopted and applied the multiplier method for ascertaining the disability compensation.

6. The Tribunal, by relying on the decision of this Court in ***Royal Sundaram Alliance Insurance Company Limited, Chennai & Others,***



C.M.A(MD)No.1122 of 2021

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Vs. S.Vani & Others reported in ***CDJ2019 MHC 3144*** and fixed the annual income of the minor claimant as Rs.45,000/- and applied the multiplier “15”. No doubt, in the judgment of the Hon'ble Supreme Court in ***Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009(5) LW 561***, there is no reference to the multiplier applicable to the case of children below “15” years. Considering the above, the decision of the Tribunal in adopting the multiplier “15” cannot be found fault with.

7. Regarding the monthly income, the learned Counsel for the appellant would strongly contend that the Tribunal ought to have fixed the monthly income at Rs.6,000/-. The learned Counsel for the claimant has relied on the decision of this Court in ***Tamil Nadu State Transport Corporation Vs. S.Surya*** reported in ***2016(2) An.W.R.722 (Mad.)***, wherein, considering the age of the injured as 14 years, the Division Bench of this Court has fixed the monthly income of the injured at Rs.6,000/- and added 50% of the income towards future prospects, by relying on the judgment of the Hon'ble Supreme Court in ***V.Mekala Vs M.Malathi*** reported in ***2014 ACJ 1441***.



C.M.A(MD)No.1122 of 2021

WEB COPY

8. Considering the age of the claimant, this Court fixes the monthly income of the deceased at Rs.5,000/- and by adding 50% of the income towards future prospects, the annual income would come to Rs. 90,000/- (Rs.5,000/- +50% x 12 = 90,000/-). Hence, the loss of future earnings would come to **Rs.8,10,000/-** (Rs.90,000/- x 15x60%).

9. The Tribunal has awarded Rs.30,000/- for pain and suffering, Rs.10,000/- towards extra nourishment, Rs.1,000/- for transportation and Rs.5,000/- towards attendant charges. The learned Counsel for the appellant would submit that the minor claimant, who was aged about 4 years at the time of accident, had amputated in his left leg below knee and the Tribunal, taking note of the inpatient treatment, ought to have granted Rs.1,00,000/- for pain and suffering and Rs.1,00,000/- towards extra nourishment and Rs.25,000/- for attendant charges, that the Tribunal has not awarded any amount for loss of marital prospects and loss of amenities and convenience throughout his life and that the Tribunal has also not awarded any amount for the artificial limb and ought to have awarded a sum of Rs.2,00,000/- for the same.



C.M.A(MD)No.1122 of 2021

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10. It is pertinent to note that no amount of compensation can restore the lost of limb or the experience of pain and suffering and that the loss of life or limb can never be eliminated or ameliorated completely. In the case of ***Tamil Nadu State Transport Corporation Vs. S.Surya***, this Court by relying on the ***Mekala's case***, above referred, has awarded a sum of Rs.2,00,000/- towards pain and suffering. In the present case, as already pointed out, the victim is 4 years old boy with amputation in the left leg. Definitely, the claimant would have undergone severe pain and suffering at the time of accident during the surgery and post-operation treatment. The mere fact that he had lost his leg below knee at the young age and to continue with the same, for the rest of his life time and to take assistance from others, losing his chance of participation in sports and other cultural activities, is a great agony and suffering. Considering the above, this Court is inclined to enhance the compensation to Rs.1,00,000/- towards pain and suffering.

11. Taking note of the period of treatment and the nature of injuries suffered and the consequent disability, the amounts awarded by the Tribunal under the heads of extra nourishment, transportation and



C.M.A(MD)No.1122 of 2021

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attendant charges are very low and hence, this Court is inclined to enhance the same to Rs.30,000/- towards extra nourishment, Rs.10,000/- towards transportation and Rs.20,000/- towards attendant charges.

12. The Tribunal, on the basis of Exs.P.9, P.10 and P.14 medical bills, has rightly awarded Rs.1,72,413/- towards medical expenses. Though the learned Counsel for the appellant would contend that the Tribunal had not awarded any amount for the artificial limb, they have not produced any material or evidence to prove that they had purchased the artificial limb.

13. As rightly contended by the learned Counsel for the appellant, the Tribunal has not awarded any compensation for the loss of marital prospects and loss of amenities. In *S.Surya's case*, this Court by relying on the judgment of *V.Mekala's case*, has awarded Rs.3,00,000/- for the loss of enjoyment of life and marriage prospects. Considering the case on hand, this Court is inclined to award a sum of Rs.1,00,000/- for the loss of marriage prospects and loss of enjoyment of life. Hence, this Court is inclined to modify the award as follows:



C.M.A(MD)No.1122 of 2021

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For Functional disability	4,05,000/-	8,10,000/-	enhanced
2	For pain and suffering	30,000/-	1,00,000/-	enhanced
3	For extra nourishment	10,000/-	30,000/-	enhanced
4	For Transportation	1,000/-	10,000/-	enhanced
5	For attendant charges	5,000/-	20,000/-	enhanced
6	For medical expenses	1,72,413/-	1,72,413/-	confirmed
7.	loss of marriage prospects and loss of enjoyment of life.	-----	1,00,000/-	granted
	Total	Rs. 6,23,413/-	Rs.12,42,413/-	Enhanced by a sum of Rs. 6,19,000/-

15. In the result, the Civil Miscellaneous Appeal is allowed by enhancing the compensation from **Rs.6,23,413/- to Rs.12,42,413/-** along with interest at 7.5%pa., and costs. The respondent/Tamil Nadu State Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.49 of 2018, on



C.M.A(MD)No.1122 of 2021

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the file of the Motor Accident Claims Tribunal / Subordinate Court, Aruppukottai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the appellant/claimant is being a minor, the entire amount shall be deposited in any Nationalized Bank till he attains majority and till then, his father/natural guardian – Mr.Balamurugan is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minor. The parties are directed to bear their own costs.

02.12.2022

Index : Yes : No

Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal /
Subordinate Court, Aruppukottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1122 of 2021

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1122 of 2021

02.12.2022