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C.M.A.No.1119 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED :27.07.2023

Coram

The Hon'ble Mr.Justice Sunder Mohan

C.M.A.No.1119 of 2023

Vishali (Minor)

rep. by father, next friend and next
guardian Umapathi.

..Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Chennai- 600 002.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 29.11.2018, in M.A.C.T.O.P.No.9030 of 2015, on the file of the Motor Accident Claims Tribunal/Principal Special Judge, Special Court under E.C. & NDPS Act,(Motor Accident Claims Tribunal as per G.O.(Ms.) No.716, Home (Tr.IV) Dept. dated 07.06.2016), Chennai.

For Appellant : Mr.K.Ayyadurai
Respondent : Mr.M.Murali Vinoth

JUDGEMENT

This Civil Miscellaneous Appeal is filed against the award passed by the Motor Accident Claims Tribunal/Principal Special Judge,



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Special Court under E.C. & NDPS Act (for short, 'Tribunal') in
M.A.C.T.O.P.No.9030 of 2015, dated 29.11.2018.

2. The Claim Petition was filed by minor, Vishali, represented by his father and next friend stating that on 25.11.2015, at about 14.30 p.m, while she was traveling in MTC bus, bearing Registration No.TN 01 N 4054, near Dr.Ambedkar College Road and when it was nearing Pullianthopu Bus Stop, the driver of the bus drove the Bus in a rash and negligent manner, due to which, the bus fell on a Pit. In the said accident, the appellant sustained injuries. Hence, the appellant filed a Petition claiming a sum of Rs.6,00,000/- as compensation.

3. The Claim Petition was resisted by the respondent/MTC by filing a counter statement denying all the averments made in the Claim Petition and contended that, driver of the bus drove the bus in a careful manner; that when the bus was nearing Pulianthopu Bus Stop, he saw uneven surface of the road, which was damaged due to heavy rain; that though he applied break, reduced the speed, the rear left side tyre of the bus fell on a pit,



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resulting in an accident; that the accident occurred not due to negligent driving of the Bus driver but was an act of God; that the respondent is not liable to pay compensation and sought for dismissal of the claim petition.

4. Before the Tribunal, in order to prove the claim, the claimant's father examined himself as P.W.1 besides examining one other witness, Dr.Mathiyalagan, as P.W.2 and marked 10 documents as Ex.P.1 to Ex.P.10. On the side of the Transport Corporation, one witness was examined, however, no documents were marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, had come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the Bus belonging to the respondent/Transport Corporation. Hence, the Tribunal passed an award for a total compensation amount of Rs.1,02,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.



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6. Aggrieved by the aforesaid compensation, the claimant has filed the present Appeal.

7. Mr.K.Ayyadurai, learned counsel appearing for the appellant/claimant submitted that injured is a minor girl, aged about 8 years at the time of the accident. Due to the accident, she sustained serious injuries. Hence, she made a Claim Petition for a sum of Rs.6,00,000/-, whereas, the Tribunal awarded a sum of Rs.1,02,000/- which is meagre. The Tribunal having accepted the evidence of Doctor/P.W.2, who assessed the disability at 25%, ought to have awarded Rs.5,000/- per percentage of disability. Further, the learned counsel submitted that compensation awarded under the head, Transportation and Extra Nourishment are also meagre and hence, prayed for appropriate enhancement.

8. Per contra, Mr.M.Murali Vinoth, learned counsel for the respondent/Metropolitan Transport Corporation submitted that the award of the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

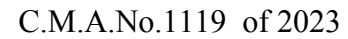


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9. Heard the learned counsel appearing both sides and perused the materials available on record.

10. The only question that arises for consideration in the instant Appeal is, whether the quantum of compensation awarded by the Tribunal is just and reasonable?

11 . On perusal of the records, this Court is of the view that, the Tribunal, having accepted the disability as 25%, ought to have awarded Rs.5,000/- per percentage of disability. Hence, the compensation awarded by the Tribunal under the head 'Disability' is enhanced to Rs.1,25,000/-. The compensation awarded by the Tribunal under the heads, 'Transportation' and 'Extra Nourishment' at Rs.3,000/- each is meagre and hence, the same is enhanced to Rs.10,000/- each. Considering the nature of injury and the fact that the appellant is a minor girl, aged 8 years at the time of the accident, this Court is inclined to award Rs.10,000/- towards Loss of Amenities and a sum of Rs.10,000/- under the head, 'Attender's Charges', as the appellant was hospitalized for six days due to the accident. The compensation



as follows:-

<i>SL. No.</i>	<i>Head</i>	<i>Tribunal award</i>	<i>High Court Award (modified/granted/confirmed)</i>
1	Transportation	Rs.3000/-	Rs.10,000/-
2	Extra Nourishment	Rs.3000/-	Rs.10,000/-
3	Damage to Clothes and Articles	Rs.1,000/-	Rs.1,000/-
4	Pain and Sufferings	Rs.20,000/-	Rs.20,000/-
5	Disability	Rs.75,000/-	Rs.1,25,000/-
6	Loss of Amenities	-	Rs.10,000/-
7	Attender's charge	-	Rs.10,000/-
	Total	Rs.1,02,000/-	Rs.1,86,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,02,000/- is hereby enhanced to Rs.1,86,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a



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period of six (6) weeks from the date of a receipt of copy of this Judgment.

It is made clear the the appellant is not entitled for any interest for the delay period on the amount of Rs.84,000/- enhanced by this Court as per the order of this Court, dated 17.04.2023, made in C.M.P.No.5695 of 2023 in C.M.A.Sr.No.19513 of 2023. On such deposit being made by the respondent/Transport Corporation, the Tribunal shall deposit the award amount in the appellant's name in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the father of the minor is permitted to withdraw the accrued interest once in three months. The appellant is directed to pay the necessary Court fee, if any, on the enhanced award amount. However, there shall be no order as to costs.

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sd

Index : Yes/No

To

The Principal Special Judge,
Special Court under E.C. & NDPS Act,

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Sunder Mohan,J.,
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