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C.M.A.Nso.2358 of 2022 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.2358 and 2361 of 2022

Tamil Nadu State Transport Corporation,
Rep. By its General Manager,
Kumbakonam Region,
Karaikudi, Sivagangai – 630 001.

.. Appellant in both appeals

Versus

Abuthahir

.. Respondent in CMA.No.2358/22

Minor Fazarullah Babu
Rep. By his mother Kamila Begam

.. Respondent in CMA.No.2361/22

Prayer: Civil Miscellaneous Appeal have been filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 06.04.2022 made in M.C.O.P.Nos.1806 and 1663 of 2019 respectively on the file of the Presiding Officer, Special Motor Accident Claims Tribunal, Tiruppur.

For Appellant

: Mr.D.Venkatachalam

For Respondent in both appeals

: Mr.Ma.Pa.Thangavel



COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

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The Transport Corporation is on appeal aggrieved by the award of the Tribunal allowing M.C.O.P.Nos.1806 and 1663 of 2019. Both claims were filed by the claimants who were injured in the road accident that occurred on 25.08.2019. While a sum of Rs.3 lakhs was claimed as compensation for the minor child, a sum of Rs.50 lakhs was claimed for the injured/claimant in M.C.O.P.No.1806 of 2019.

2. According to the the injured/claimant in M.C.O.P.No.1806 of 2019 he was working as a Tailor. His earning capacity has been completely affected since his right leg below the knee has been amputated due to the accident. As far as minor child is concerned, it was a crush injury on the left big toe.

3. The Tribunal, on assessment of the evidence, that was placed before it, concluded that the accident had occurred due to the rash and negligent driving of the driver of the bus. However, it apportioned 5% towards contributory negligence on the claimant in M.C.O.P.No.1806 of 2019 on the ground that 4 persons were travelling in a motor cycle. It is admitted that out 4 persons, 2 were minor children aged about 12 years and 9 years respectively, one of whom is the claimant in M.C.O.P.No.1663 of 2019. The Tribunal assessed the compensation payable to the father, namely, the claimant in M.C.O.P.No.1806 of 2019 at Rs.34,06,552/- and the



compensation payable to the minor child, namely, the claimant in M.C.O.P.No.1663 of 2019 at Rs.2,56,600/-.

4. Learned counsel for the Transport Corporation would vehemently contend that the contributory negligence at 5% is very low and in any case, the Tribunal erred in not apportioning any amount towards contributory negligence for the minor child. Despite his best efforts, learned counsel is unable to pick hole in the award of the Tribunal relating to negligence and quantum of compensation as the findings are based on sound analysis of the evidence.

5. We have considered the submissions of the learned counsel for the appellant Corporation.

6. As regards the contention that the Tribunal ought to have apportioned certain amount of negligence on the claimant in M.C.O.P.No.1663 of 2019 is concerned, the same will have to be straight away rejected. As the claimant is a minor child there cannot be any contributory negligence assigned to a minor child, who had travelled along with parents. On the quantum of contributory negligence on the claimant in M.C.O.P.No.1806 of 2019, we find it very difficult to accept the



submission of the learned counsel that it should be enhanced beyond 5%. It is common knowledge that minor children travel along with their parents in a two-wheelers. That alone cannot be a ground to assign contributory negligence. However, the Tribunal has fixed 5%, which, in our opinion, is just and proper. Hence, we see no reason to interfere with the awards passed by the Tribunal and the appeals, therefore, fail and they are dismissed. The claimant in M.C.O.P.No.1806 of 2019 is permitted to withdraw the amount already deposited. The appellant-Transport Corporation shall deposit the balance amount within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, he is permitted to withdraw the entire amount. As regards the award in M.C.O.P.No.1663 of 2019 in favour of the minor child is concerned, the amount awarded shall be kept in Fixed Deposit bearing cumulative interest in a nationalised Bank till the claimant attains the majority. No Costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (R.K.M., J.)
07.07.2023

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Index:yes/no
Speaking/Non-speaking
Neutral citation: yes/no



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To
The Presiding Officer,
Special Motor Accident Claims Tribunal,
Tiruppur.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.
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