

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.01.2023

Pronounced on : 15.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1407 of 2013

Minu Sunitha Mary

... Appellant / Claimant

Vs.

The General Manager,
Tamilnadu State Transport
Corporation Limited,
Tirunelveli.

... Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the award of compensation passed in M.C.O.P.No.80 of 2011 dated 16.02.2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.V.Balaji

For Respondent : Mr.P.Prabhakaran

JUDGMENT

This appeal is filed against the judgment and decree passed in M.C.O.P.No.80 of 2011 on the file of the Chief Judicial Magistrate, Tirunelveli. The appellant is the claimant and the respondent is the respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 06.08.2010, when the petitioner and her mother were travelling in a bus bearing registration number TN 72 N 1095, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against a lorry bearing registration number TN 58 K 5784 that was parked on the left side of the road. The petitioner sustained multiple injuries all over the body. She was taken to Thoothukudi AVM Hospital. Then she was taken to Susrusha Hospital, Nagercoil. He underwent an operation on 08.08.2010. She took treatment as inpatient up to 14.08.2010. Then she went to the hospital for periodic check up upto 08.11.2010. The petitioner claimed a sum of Rs.1,00,00,000/- as compensation.

3.The mother of the petitioner who sustained injury in the very same accident filed a petition in M.C.No.81 of 2011. Both the cases were taken up

for a joint trial and a common judgment was passed by the Tribunal. In the common trial, four(4) witnesses were examined and seventeen(17) documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.2,45,800/- as compensation.

4.Against the award amount, the appellant filed this appeal on the following grounds:

The Tribunal is wrong in holding that there was no proof for the amount paid by the petitioner for admission to the M.E., Course, which was non-refundable. The Tribunal failed to consider that the claimant sustained multiple injuries and she was unable to move around for a period of more than six months. For fixing plates and rods and for removing the same, medical procedures have to be followed. Eventhough, the rod is removed, she could move only with the support of a walker, that too within the residence. The Tribunal has awarded only Rs.5,000/- towards transport expenses which is very low. The Tribunal ought to have awarded Rs.2,50,000/- towards medical expenses which is supported by documentary and oral evidence. The Tribunal ought to have awarded Rs.5,00,000/- towards pain and sufferings

and further Rs.5,00,000/- towards mental depression and agony. The Tribunal has awarded only Rs.15,000/- towards loss of amenities, which is very low. The Tribunal ought to have granted compensation under two categories. One for the disability and the another for loss of earning capacity. The Tribunal failed to consider that the appellant sustained 35% disability and that because of the disability, her career prospects is lost. The disability would affect her marriage prospects. The appellant is entitled to Rs.50,000/- towards extra nourishment.

5.On the side of the appellant, it is stated that it was the bus driver who was rash and negligent. The bus hit against a stationed lorry which was parked along the left side of the road. Copy of the FIR was marked as Ex.P1, copy of the complaint was marked as Ex.P9, Acknowledgement for the receipt of the complaint was marked as Ex.P10, copy of the charge sheet was marked as Ex.P17.

6.On the side of the respondent it is stated that the lorry was parked in the middle of the road without any signal and that was the reason for the accident. The FIR was filed against the bus driver and the charge sheet was not against the bus driver. The respondent is not liable to pay compensation.

On the side of the respondent it is stated that there is a delay in lodging the complaint and that the complaint was given only on 24.09.2010 and that the accident has happened on 06.08.2010 and the delay in lodging the complaint was not considered by the Tribunal.

7.It is seen that the accident has happened on 06.08.2010. The FIR in Crime No.262 of 2010 was registered by the Pudukkottai Police Station on the very same date. Only for follow up action, P.W.2 has given a complaint before the Superintendent of Police on 24.09.2010. P.W.2 has deposed that the lorry driver was not the reason for the accident. It is seen that the charge sheet was prepared only against the driver of the bus. Non filing of the charge sheet within the prescribed time cannot be considered as an advantage in favour of the driver of the bus. Except R.W.1, who was the driver of the bus, no eye witness was examined on the side of the respondent.

8. No appeal was filed by the respondent against the liability fixed by the Tribunal in the connected case in M.C.No.81 of 2011. Considering the evidence of P.W.1 and P.W.2 and considering Ex.P1 and Ex.P17, it is decided that the bus driver is responsible for the accident.

9.On the side of the appellant it is stated that the entire future prospects of the petitioner was affected and multiplier ought to have been adopted for fixing the compensation.

10.A judgment of the Hon'ble Supreme Court reported in **2020 0 ACJ 2152** in the case of **Navjot Singh Vs Harpreet Singh and others**, it is held as follows:

"13.But we do not think that the notional income of a student undergoing a Degree course in Engineering from a premier institute should be taken to be equivalent to the minimum wages admissible to an unskilled worker. Students recruited through campus interviews are atleast offered a sum of Rs. 20,000/- per month. Even if we do not go on the said basis, the High Court could have fixed the notional income atleast at Rs. 10,000/- per month."

11.Another judgment of the Hon'ble Supreme Court reported in **2022 0 SC 1029**, in the case of **S.Vasanthi and another Vs M/s.Adhiparasakthi Engg. College and another** is cited, wherein the Hon'ble Supreme Court has fixed the monthly income as Rs.30,000/-. For a student of M.E., course, the Supreme Court has fixed the monthly income as Rs.30,000/-.

12.On the side of the appellant a judgment of this Court reported in **2020 0 ACJ 2695** in the case of **Pappu Deo Yadav Vs Naresh Kumar and others**, is cited, wherein the Hon'ble Supreme Court has held that in addition to loss of earning, compensation for future prospects to be given when there is a permanent disablement.

13.P.W.3 has deposed that the claimants sustained 35% disability. Disability certificate was marked as Ex.P15. For 35% disability, the Tribunal has awarded Rs.70,000/- as compensation. Ex.P5 is the discharge summary issued by the AVM Hospital, Thoothukudi. The petitioner sustained fracture in the right leg. Ex.P6 is the discharge summary issued by the Susrusha Hospital, Nagercoil. Considering the nature of injury, it is decided that the claimant is not entitled to claim compensation by applying multiplier method. The claimant sustained 35% disability. The claimant is entitled to Rs.3000/- per percentage for each percentage of disability and hence it is decided that the appellant is entitled to Rs.1,05,000/-(35 x 3000) as compensation for the disability.

14.On the side of the appellant it is stated that the appellant has to undergo another surgery for removing the plate and screw.

15.On the side of the appellant it is stated that future medical expenses was not considered by the tribunal. Since plate and screws were affixed, to remove them another surgery is required. Hence it is decided that the appellant is entitled to Rs.50,000/- towards future medical expenses. The Tribunal has awarded Rs.1,23,790/- towards medical expenses, which is reasonable. The Tribunal awarded Rs.15,000/- towards extra nourishment and medical attendance which is reasonable.

16.The Tribunal has awarded Rs.15,000/- towards loss of amenities and the same is enhanced to Rs.50,000/-. The Tribunal has awarded Rs.5000/- towards transport expenses. Considering that the treatment was taken in Nagercoil, it is decided that the claimant is entitled to Rs.10,000/- towards transport expenses. The petitioner is entitled to Rs.25,000/- towards pain and sufferings.

17.On the side of the appellant it is stated that the appellant was a student doing M.E., Course. She attended class only for two days and due to the accident she could not attend class further. But the fees paid by her was not refunded. Ex.P12 is the bonafide certificate issued by the Manonmaniyam

Sundaranar University. Considering Ex.P12, it is decided that the petitioner is entitled to Rs.22,500/-.

The award of compensation is modified as follows:

For disability	-	Rs.1,05,000/-
Future Medical expenses-		Rs. 50,000/-
Medical expenses	-	Rs.1,23,790/-
Pain and sufferings	-	Rs. 25,000/-
Extra nourishment and Medical attendant	-	Rs. 15,000/-
Damage to articles	-	Rs. 2,000/-
Transport expenses	-	Rs. 10,000/-
Loss of amenities	-	Rs. 50,000/-
Loss of fees paid for M.E.,Course	-	Rs. 22,500/-

Total	-	Rs.4,03,290/-

18. The Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,45,800/- to **Rs.4,03,290/-(Rupees Four Lakhs Three Thousand Two Hundred and Ninety only)** which shall carry an interest of 7.5% per annum.

(ii) The respondent / Transport Corporation is directed to deposit the

compensation amount i.e., Rs.4,03,290/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.80 of 2011 dated 16.02.2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to pay additional Court fee for the enhanced amount within a period of three weeks from the date of receipt of a copy of this order; if not paid earlier.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the entire award of Rs.4,03,290/-(Rupees Four Lakhs Three Thousand Two Hundred and Ninety only) with accrued interest and costs, after following the due process of law, less any amount already received by her. The appellant is not entitled for any interest for the default period, if there is any.

15.02.2023

NCC: Yes / No

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal cum Chief Judicial Magistrate,
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)No.1407 of 2013

15.02.2023