



C.M.A.(MD).No.588 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.588 of 2019

Minor Gowrisankar,
S/o.Karmegam,
Thaniyarmangalam,
Melur Taluk,
Madurai District.
Represented through his Mother
Amutha.

..... Appellant /Petitioner

-vs-

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

.... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 22.04.2010, made in M.C.O.P.No.1096 of 2008, on the file of the Motor Accidents Claims Tribunal/ 1st Additional Sub Judge, Madurai for enhancement of compensation.

For Appellant : Mr.P.Palanisamy

For Respondent : Mr.P.Prabhakaran



C.M.A.(MD).No.588 of 2019

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the injured claimant seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal/ 1st Additional Sub Judge, Madurai.

2. The petitioner an injured claimant, is a minor boy, who met with an accident inside the Melur Bus Stand.

3. According to the claim petitioner, the petitioner/ the claimant had sustained fracture in the right hand and the right side of the hip. The claimant has also sustained femur head bone fracture and right arm metacarpal bone fracture and major operation was performed and iron plate inserted inside the bone of right femur bone and that skin grafting were done in his left leg on the skin removing portion of right leg. Based upon the above said injuries, and PW.4- Doctor evidence, the Tribunal has awarded a sum of Rs.1,12,300/- (Rupees One Lakh Twelve Thousand and Three Hundred only). Challenging the same, the present Civil Miscellaneous Appeal has been filed seeking enhancement of compensation.



C.M.A.(MD).No.588 of 2019

WEB COPY

4. The learned counsel appearing for the claimant/appellant had contended that the claimant had met with an accident at Melur and he was initially given treatment at Melur Government Hospital and thereafter, he was taken to Government Rajaji Hospital, Madurai. On various occasions, he has visited Government Rajaji Hospital, Madurai. The petitioner has undergone a second surgery also. Therefore a sum of Rs.5,000/- (Rupees Five Thousand only) given under the head of transport expenses, is on the lower side. He further contended that the petitioner to take extra nourishment for a longer period and hence, the Tribunal ought not to have awarded a just sum of Rs.10,000/- (Rupees Ten thousand only) and he prayed for enhancement of the said payment.

5. Pointing out paragraph No.9 of the order of the Tribunal, the learned counsel appearing for the petitioner had contended that in view of various grievous injuries sustained by the minor boy claiming an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) under the head of pain and suffering, is on the lower side. He further contended that as per the Wound Certificate- Ex.P-12, the claimant has sustained 36% disability and under the



C.M.A.(MD).No.588 of 2019

said head only a sum of Rs.36,000/- (Rupees Thirty Six Thousand only) has been awarded. Therefore, he sought for enhancement under all of these heads.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the accident had taken place inside the bus stand and there is no question of negligence on the part of the transport corporation. He further contended that the amount awarded by the Tribunal is excessive. Any how, considering the fact that he is a minor, the Transport Corporation has not filed any appeal, therefore, he prayed for sustaining the Award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. The claimant/appellant had prayed for enhancement of amount under the transport expenses on the ground that the claimant/minor had to undergo a second surgery also for removal of the plates and screws that was fixed during the first surgery due to fracture. Therefore, I am of the opinion that the trial Court ought to have awarded an additional sum of another Rs.5,000/-



C.M.A.(MD).No.588 of 2019

(Rupees Five Thousand only) towards transport expenses.

WEB COPY

9. Considering the fact that the petitioner/ claimant, being a minor boy, he requires an extra nourishment, the Tribunal ought to have awarded the additional sum of another Rs.5,000/- (Rupees five thousand only) under the head of extra nourishment. The nature of injuries sustained by the minor boy clearly indicates that they are grievous in nature and therefore, I am of the opinion that a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) awarded under the head of pain and suffering, is on the lower side. This Court, decides to award a further sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and suffering.

10. The Tribunal has awarded at the rate of Rs.1000/- (Rupees One Thousand only) per percentage for disability and totally a sum of Rs.36,000/- (Thirty Six Thousand only). However, it would be in the interest of justice of to award Rs.2,000/- (Rupees Two Thousand only) per percentage for the disability sustained by the minor boy.



C.M.A.(MD).No.588 of 2019

WEB COPY

11. Considering the above said facts the enhancement is made in the following heads:

Transport Expenses for a sum of	: Rs. 5,000/-
Extra Nourishment for a sum of	: Rs 5,000/-
Pain and suffering for a sum of	: Rs.25,000/-
Disability additional amount of	: <u>Rs.36,000/-</u>
Total	: Rs.71,000/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent of additional compensation of the amount of Rs.71,000/- (Rupees Seventy One Thousand only) and the said amount shall be paid at the rate of interest 7.5% per annum from 07.12.2007 onwards. However, the claimant shall not be entitled to interest for the period of 438 days, because of the delay in filing the Civil Miscellaneous Appeal. There shall be no order as to costs.

09.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



WEB COPY



C.M.A.(MD).No.588 of 2019

To

1. The Motor Accident Claim's Tribunal/
The (1st Additional) Sub Court,
Madurai.
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Bye Pass Road,
Palanganatham,
Madurai.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.588 of 2019

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.588 of 2019

09.03.2023