



WEB COPY



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.50 of 2021 and 1328 of 2023
and CMP No.13290 of 2023

CMA No.50 of 2021

Minor Sakthivel Son of Eswaran
Represented by his mother and Next Friend,
Meena wife of Eswaran,
Residing at
No.192/B, Perumal Koil Street,
Thamariapakkam Colony,
Ammanampakkam Village, Tiruvallur Taluk and District
... Appellant

Vs.

The Manager,
Metropolitan Transport Corporation,
Pallavan House, Annasalai,
Chennai 600 002
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 10.07.2019 made in MCOP No.319 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvallur.

For Appellant : Mr.K.Varadhakamaraj



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

For Respondent : Mr.A.Vinothraj

WEB COPY

CMA No.1328 of 2023

The Manager,
Metropolitan Transport Corporation,
Pallavan House, Annasalai,
Chennai 600 002

... Appellant

Vs.

Minor Sakthivel Son of Eswaran
Represented by his mother and Next Friend,
Meena wife of Eswaran,
Residing at
No.192/B, Perumal Koil Street,
Thamariapakkam Colony,
Ammanampakkam Village, Tiruvallur Taluk and District

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 10.07.2019 made in MCOP No.319 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvallur.

For Appellant : Mr.A.Vinothraj

For Respondents : Mr.K.Varadhakamaraj



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

WEB COPY

COMMON JUDGMENT

The Transport Corporation and the claimant have filed these appeals against the award passed in MCOP No.319 of 2017 dated 10.07.2019 by the Motor Accident Claims Tribunal, Special Sub Court, Thiruvallur.

2. The case of the claimant, who is a young boy aged about 12 years, is that on 17.03.2017, he was waiting in a bus stop to go to the school and at about 8.30 a.m, the bus belonging to the Transport corporation had come near the bus stop and when the students along with the claimant tried to board the bus, the driver without noticing the same, started the bus and as a result, the claimant fell down from the bus and the rear wheel ran over the hip portion of the claimant. The claimant sustained injuries to his pelvis. The medical board assessed the disability at 45%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the Transport Corporation. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.6,64,970/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	For partial permanent disability (45% @ 1% @ Rs.3,000)	Rs.1,35,000/-
2.	Loss of earning capacity (Rs.8400 x 12 x 20% x 15)	Rs.3,02,400/-
3.	Other Medical expenses	Rs. 97,570/-
4.	Transport Expenses	Rs.10,000/-
5.	Extra Nourishment	Rs. 5,000/-
6.	Pain and sufferings	Rs.50,000/-
7.	Attender charges	Rs.15,000/-
8.	Loss of happiness and amenities	Rs.50,000/-
	Total	Rs.6,64,970/-

The above compensation was directed to be paid with



interest at the rate of 7.5% per annum.

WEB COPY

4. The Transport Corporation has filed the appeal mainly on the ground that there was contributory negligence on the part of the claimant and that apart, the compensation fixed is on the higher side. Per contra, the claimant has filed the appeal not being satisfied with the quantum of compensation fixed by the Tribunal and the claimant has sought for enhancement of compensation.

5. Heard Mr.K.Varadhakamaraj, learned counsel for claimant and Mr.A.Vinothraj, learned counsel for Transport Corporation.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The first issue that has to be gone into is to find out if there



WEB COPY

is contributory negligence on the part of the claimant. The Tribunal has elaborately dealt with this issue. The Tribunal has considered the evidence of PW1 along with Ex.P1 (FIR). The Tribunal has also considered the evidence of RW1 who is the driver of the bus belonging to the Transport Corporation. The Tribunal on appreciation of the evidence of PW1 along with Ex.P1 came to a conclusion that there are three different versions regarding the manner in which the accident had taken place. As per the claim petition, the bus stopped in the bus stop and when the claimant attempted to board the bus, the driver started the vehicle without noticing the same and caused the accident. Whereas, as per the evidence of PW1 and the version found in Ex.P1, it is stated as if the bus had dashed on the minor claimant when he was waiting in the bus stop.

9. The Tribunal thereafter proceeded to take note of Ex.P4, which was the alteration report and Ex.P5, which was the final report filed by the police after the completion of investigation. The Tribunal found that the offence was altered to section 279 and 338 of IPC and the charge sheet was also filed against the driver of the bus. The Tribunal also carefully considered the evidence of RW1, who was the driver of the bus.



On appreciation of the entire oral and documentary evidence, the Tribunal came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus since he had started the bus even without noticing the claimant and other school children who were getting into the bus in the bus stop. The findings rendered by the Tribunal does not suffer from any illegality and in fact, it is a well considered finding, which does not require the interference of this Court.

10. The next issue that has to be gone into is with regard to the quantum of compensation that was fixed by the Tribunal. During the pendency of this appeal, the claimant was referred to the Medical Board attached to the Kilpauk Medical college hospital, Chennai. The Medical board assessed the disability suffered by the claimant and has given a disability certificate dated 05.03.2024. As per the disability certificate, the disability suffered by the claimant has been noted as follows :-

Post Traumatic Sequelae – Pelvis, left leg (front back)

Paraplegia -2 o Spinal cord atrophy

The Medical board has also assessed 75% as permanent disability



suffered by the claimant.

WEB COPY

11. The bone of contention is with regard to the compensation that was fixed under the head of partial permanent disability and loss of earning capacity by the Tribunal. The Tribunal had separately dealt with these two heads and fixed a sum of Rs.1,35,000/- and Rs. 3,02,400/- respectively.

12. Considering the disability certificate that has now been given by the Medical board, it is seen that the claimant has suffered from serious injuries and the Medical board has come to a conclusion that the claimant is suffering 75% permanent disability. Therefore, this Court is inclined to adopt the multiplier method by taking the full body as 75%.

13. The Tribunal has fixed a sum of Rs.6,000/- as the notional monthly income of the claimant and has added 40% towards future prospects. Since the accident in this case has taken place in the year 2017, this Court is inclined to re-assess the notional monthly income fixed by the Tribunal.



WEB COPY

14. It will be more appropriate to take note of the recent judgement of this Court in [*National Insurance Company Limited Vs. Minor Manoj*] reported in **2024 (1) TNMAC 710**. The learned Single Judge has taken note of the earlier judgments and the relevant portions are extracted hereunder :-

9. *The learned counsel appearing for the 2nd respondent/Insurance Company has mainly argued that the claimant is 9 years old boy. The Tribunal erred in awarding compensation by fixing notional income at Rs.9,000/- p.m. and also adding 40% towards future prospectus by adopting multiplier 18. The Tribunal failed to consider the dictum of the Hon'ble Supreme Court in the case of "Master Mallikarjun /v/ Divisional Manger, National Insurance Company" reported in 2013 (2) TNMAC 338 (SC), wherein the Hon'ble Supreme Court issued guidelines for child victims and considered for Rs.1,00,000/- upto 10% disability, Rs.3,00,000/- upto 30% disability, Rs.4,00,000/- upto 60% disability, Rs.5,00,000/- upto 90% disability and Rs.6,00,000/- for above 90% disability. In this case, the victim was assessed 75% disability and so, the claimant is entitled to Rs.5,00,000/-, but the Tribunal awarded Rs.20,41,200/- towards loss of earning power, which is against the legal dictum. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.*



WEB COPY



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

10. *Per contra, the learned counsel for the claim petitioner/1st respondent herein has contended that the Tribunal has made elaborate discussion over the evidence adduced by both parties and citations relied by parties. After considering all aspects, the Tribunal has awarded the compensation and there is no irregularity or miscarriage of justice as contended by the appellant/2nd respondent/Insurance Company. There is no infirmity in the award. Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.*

11. *On hearing both and on perusal of records, there is no dispute that the accident took place due to rash and negligent driving of the first respondent who drove the vehicle TN 76 AA 3089, in which the petitioner was travelling as a passenger. There is no contra evidence adduced by the 2nd respondent, appellant herein. On perusal of medical records, produced by the petitioner, it is clear that the petitioner sustained fracture and multiple grievous injuries. The petitioner sustained crush injury in his right hand and so, the skin from his right thigh utilized for surgery. On perusal of records, the petitioner was assessed by the Medical Board and his disability was fixed at 75% by the Medical Board as seen from Ex.C.3.*

12. *The only contention urged by the appellant/2nd respondent Insurance Company is that the minor petitioner is only 9 years old boy and he cannot be equated an earning member or non-earning person as per Schedule II and therefore the notional income fixed at Rs.9,000/- with future prospectus of 40% the total income fixed*



at Rs.12,600/- by the Tribunal is against settled principle of law as laid down by the Hon'ble Supreme Court. In such cases, the Supreme Court issued guidelines and for 75% disability, the petitioner is entitled to Rs.5,00,000/-.

13. On perusal of citation relied on by the appellant/2nd respondent, in the case of “Master Mallikarjun /v/ Divisional Manger, National Insurance Company” reported in 2013 (2) TNMAC 338 (SC), the Hon'ble Supreme Court clearly held in paragraph No.8 as follows:

“8.While assessing the non-

*pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration etc., have to be addressed especially in the case of child victim. For a child the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structure formula as per second schedule...” So, considering all these aspects the Hon'ble Supreme Court laid the principle in a case arising out of accident took place in the year 2006. However, in the recent verdict reported in (2020) 4 Supreme Court Cases 413 (*Kajal Vs. Jagdish Chand and Others*) the Hon'ble Supreme Court has awarded a compensation of Rs.62,27,000/- for a 12 year old minor victim girl.*



14. On perusal of judgment of the Tribunal, it is clear that before the Tribunal both sides relied on citations. The Tribunal relied on the judgment of the Division Bench of this Court reported in 2019 (1) TNMAC 197 (*The Oriental Insurance Co.Ltd., vs. Minor Soundarya*) and 2019 (1) TNMAC 18 (*Mohammed Babu vs. MGM Travels, Chennai*), wherein an 8 years old minor victim was awarded compensation by taking notional income of Rs.10,000/- p.m. adding 40% towards future prospects. In this case, the minor petitioner is aged 9 years old, whose right hand was crushed and the Medical Board assessed permanent disability at 75%.

15. The Hon'ble Supreme Court in its verdict reported in 2022 Live Law (SC) 968 (*Sidram vs. The Divisional Manager, United India Insurance Co.Ltd., and Anr.*) has held that the process of determining compensation by the Court is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, more so claims of injury and disability point out that 'money cannot renew a physical frame that has been battered.' and appreciate the fixation of compensation applying multiplier on notional income. Therefore, this Court holds that the Tribunal has not erred in awarding compensation of Rs.20,41,200/- to the claimant towards loss of earning capacity by taking notional income of Rs.9,000/- with 40% prospectus and multiplier 18. There is no dispute in respect of other compensation awarded in other heads. In the above facts and circumstances, the award passed by the Tribunal need not be interfered and thus this Civil Miscellaneous Appeal fails.



WEB COPY

15. The learned counsel for Transport Corporation submitted that the claimant in this case was a minor boy aged about 12 years and therefore, the compensation must be fixed under the head of disability by taking into consideration the judgement of the Apex Court in ***Master Mallikarjun case*** reported in ***2014 14 SCC 396***. Therefore, it was contended that the claimant suffered 75% disability and therefore, he will be entitled only for a sum of Rs.5,00,000/- as compensation under this head.

16. As rightly held by the learned Single Judge in the above judgement, that was a case where the accident had taken place during the year 2006 and therefore, that judgement cannot continue to be applied mechanically for all future cases irrespective of the passage of time. That is the reason why, the learned single Judge took note of the latest judgement of the Apex Court in ***[Kajal Vs. Jagadish Chand]*** reported in ***2020 4 SCC 413***. In that case, the victim girl was aged about 12 years and the Apex Court had fixed the compensation at Rs.62,27,000/-. The



learned Single Judge had also taken into account the judgement of the Apex Court in *[sidram Vs. Divisional manager, United India Insurance Co. Ltd and another]* reported in **2022 (2) TNMAC 737 (SC)** and held that the process of determining the compensation involves approximation and in any case, disability can never be assessed in terms of money since the 'money cannot renew a physical frame that has been battered. In that case, the learned Single Judge was dealing with a claimant, who was only aged about 9 years where the notional monthly income was fixed at Rs.9,000/-and the same was confirmed.

17. I am inclined to follow the above judgement of the learned single Judge. The age of the claimant was 12 years in this case and the accident had taken place in the year 2017. Therefore, this Court is inclined to fix the notional monthly income at Rs.10,000/- and add 40% towards future prospects. In view of the same, the compensation under the head of loss of earning capacity / disability is calculated as follows :-

<i>Monthly Income</i>	:	<i>Rs. 10,000/-</i>
<i>Add: Future Prospects</i>	:	<i>Rs. 4,000/-</i>
<i>40% of Rs.10,000/-</i>		<i>-----</i>



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

Rs. 14,000/-

Loss of earning capacity / disability = 14,000 x 12 x 15 x 75%

=Rs.18,90,000/-

18. The claimant was taking treatment as an in patient from 17.03.2017 to 29.05.2017 and once again from 22.07.2017 to 26.07.2017. He also underwent multiple surgeries in his left leg and thigh. In view of the same, this Court is inclined to enhance the compensation under the head of Transportation expenses to Rs.25,000/-, Extra Nourishment to Rs.50,000/-, pain and sufferings to Rs.1,00,000/- and attender charges to Rs.20,000/-

19. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following manner :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1	Loss of earning capacity	Rs.18,90,000/-
3.	Other Medical expenses	Rs. 97,570/-
4.	Transport Expenses	Rs.25,000/-
5.	Extra Nourishment	Rs. 50,000/-



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

6.	Pain and sufferings	Rs.1,00,000/-
7.	Attender charges	Rs.20,000/-
8.	Loss of happiness and amenities	Rs.50,000/-
	Total	Rs.22,32,570/-

20. The compensation awarded by the Tribunal at Rs.6,64,970/- is enhanced to Rs.22,32,570/-. The Transport Corporation is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal No.50 of 2021 is partly allowed in the above terms and Civil Miscellaneous appeal No.1328 of 2023, stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

WEB COPY

03.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

rka

N.ANAND VENKATESH.,J



Civil Miscellaneous Appeal Nos.1328 of 2023 and 50 of 2021

rka

WEB COPY

To,
Motor Accident Claims Tribunal, Special Sub Court, Thiruvallur.

Civil Miscellaneous Appeal Nos.50 of 2021 and 1328 of 2023
and CMP No.13290 of 2023

03.07.2024