



C.M.A.No.2624 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2624 of 2021

K. Selvi

... Appellant / petitioner

Vs.

1. The Managing Director,
Metropolitan Transport Corporation,
[Chennai Division] Ltd.,
Chennai – 600 002.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 13.12.2018, made in M.C.O.P.No.2568 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court, under EC & NDPS Act, Chennai.

For Appellant : Mr. N. M. Muthurajan

For Respondent : Mr. A. Vinothraj



WEB COPY



C.M.A.No.2624 of 2021

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking for enhancement of compensation awarded in M.C.O.P.No.2568 of 2015, dated 13.12.2018, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C & NDPS Act, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 05.02.2015 at about 16.30 hours, she was travelled in a Metropolitan Transport Corporation bus bearing Registration No.TN 01 N 9223 running through the Teynampet Anna Arivalayam, while the bus reached near Anna Arivalayam, the driver of the bus has applied sudden brake in negligent manner, which resulted in causing severe injuries to the passengers including the petitioner. Due to which, she has sustained humerous fracture on the right Upper Arm and injury on the right wrist. After treatment, she has come forward with the claim petition seeking compensation for a sum of Rs.12,00,000/-.



C.M.A.No.2624 of 2021

WEB COPY

4. The respondent - Transport Corporation has contested the claim on the ground that the compensation claimed based on the injury and disability sustained by the claimant is on the higher side and also stated that she has suddenly stretched out her hand from running bus, which resulted in causing injury to her.

5. The Tribunal, after considering the evidences placed on record has held that the driver of the bus has suddenly stopped the bus, which resulted in causing injury to the claimant and that the Transport Corporation is liable to pay the compensation and also the Tribunal has quantified the compensation and awarded a sum of Rs.1,58,300/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded, the claimant has approached this Court seeking enhancement of compensation. The respondent - Transport Corporation has not filed any appeal for challenging the same.



C.M.A.No.2624 of 2021

WEB COPY

7. Mr. N. M. Muthurajan, learned counsel for the claimant has submitted that the Tribunal has not properly appreciated the disability sustained by the claimant while awarding compensation since she is a lady and sustained fracture on right hand and wrist, she has drastically disabled from doing her day-to-day activities and this fact has not been properly considered by the Tribunal and just compensation has not been awarded. Hence prays to enhance the compensation.

8. Per Contra, Mr. A. Vinothraj, learned counsel for the Transport Corporation has submitted that based on the evidences adduced, the Tribunal has awarded compensation under various heads is on the higher side and the same is not required any enhancement and prays to confirm the award.

9. I have considered the rival submissions made on both sides and also perused the records.

10. While awarding compensation for disability, the Tribunal



based on the opinion of the Doctors, who assessed the disability has held that the disability fixed by the Doctor - P.W.2 is on the higher side and limited the disability to the extent of 25% and awarded a sum of Rs.3,000/- per percentage of injury.

11. On perusal of the reasons given by the Tribunal, it shows that the petitioner had sustained one fracture on the shaft of right humerus and surgery also conducted and implants were also fixed during the time of surgery. Considering the nature of injury and the fact that subsequently, it has been united and based on the evidence recorded from P.W.1 and P.W.2 the Tribunal has limited the disability into 25% and the reasons stated by the Tribunal for limiting the disability is acceptable. However, the Tribunal has awarded Rs.3,000/- per percentage of injury by considering the injury as non-functional disability and this Court accepts the said finding that the disability sustained by the claimant is a non-functional disability.

12. This Court is also consistently followed the Judgment of the ***Chinnatambi vs. Deepa and Others [2020 (1) TN MAC 617]*** case, and awarding compensation of Rs.4,000/- per percentage for the injuries sustained for the accident occurred from the year 2015 onwards.



C.M.A.No.2624 of 2021

Accordingly, the compensation awarded under the head permanent disability is enhanced to Rs.4,000/- per percentage of injury i.e., an amount of Rs.1,00,000/- [4000 x 25] is awarded under the head disability. The Tribunal has also awarded a sum of Rs.3,000/- for the head Extra Nourishment and this Court is of the view the same is on the lower side and the same requires enhancement. Accordingly this Court is inclined to enhance a sum of Rs.10,000/- for the head Extra Nourishment.

13. The Tribunal after considering the other aspects awarded compensation under the head future medical expenses, attender charges, loss of amenities and pain and sufferings and this Court is of the view the compensation awarded under those heads are just and reasonable and the same requires no further enhancement hence the same is hereby confirmed. For the head Loss of income during treatment period, the Tribunal has awarded a sum of Rs.20,000/- and considering the fact that since the petitioner is being a lady and sustained injury i.e., fracture on her hand more particularly, on humerus as well as wrist the loss of earnings to be enhanced to Rs.30,000/-. As far as the compensation awarded under other heads are concerned, the same is reasonable and the same is hereby



C.M.A.No.2624 of 2021

confirmed.

WEB COPY

14. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Loss of earnings	Rs.20,000/-	Rs.30,000/-	Enhanced
2.	Transport to Hospital	Rs.3,000/-	Rs.3,000/-	Confirmed
3.	Extra Nourishment	Rs.3,000/-	Rs.10,000/-	Enhanced
4.	Damages to clothes and articles	Rs.2,000/-	Rs.2,000/-	Confirmed
5.	Medical Expenses	Rs.300/-	Rs.300/-	Confirmed
6.	Future Medical Expenses	Rs.10,000/-	Rs.10,000/-	Awarded
7.	Compensation for attendants	Rs.10,000/-	Rs.10,000/-	Awarded
8	Loss of amenities	Rs.10,000/-	Rs.10,000/-	Confirmed
9	Pain & Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
10	Compensation for continuing or permanent disability	Rs.75,000/-	Rs.1,00,000/-	Enhanced
	Total	Rs.1,58,300/-	Rs.2,00,300/-	Enhanced by Rs.42,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,58,300/-



C.M.A.No.2624 of 2021

is hereby enhanced to Rs.2,00,300/- [Rupees Two Lakhs and Three Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The respondent – Transportation 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 period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2568 of 2015, on the file of the Motor Accidents Claims Tribunal, Special Judge, Special Court under E.C & NDPS Act, Chennai. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. It is made clear that the appellant/claimant is not entitled to claim any interest for the delay period as per the Order of this Court dated 27.08.2021 made in C.M.P.No.9497 of 2021 in C.M.A.SR.No.52483 of 2021. There shall be no order as to costs in the



C.M.A.No.2624 of 2021

present appeal.

WEB COPY

01.12.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Principal Special Judge, Special Court
under EC & NDPS Acct,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



C.M.A.No.2624 of 2021

K.RAJASEKAR,J..

ssi

C.M.A.No.2624 of 2021



WEB COPY



C.M.A.No.2624 of 2021

01.12.2023