

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2650 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Having office at Railway Station Road
Kumbakonam Munsif and Taluk ... Appellant / Respondent

-Vs-

Padmini
W/o Azhagarasan ... Respondent / Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree dated 21.4.2015 made in M.C.O.P.No.384 of 2012 on the
file of the Motor Accidents Claims Tribunal, Subordinate Judge,
Mannargudi.

For Appellant :: Mr.G. Ramar

JUDGMENT

This civil miscellaneous appeal has been directed against the impugned judgment and decree passed in M.C.O.P.No.384 of 2012 dated 21.4.2015, in and by which the Motor Accidents Claims Tribunal, Subordinate Judge, Mannargudi has awarded a sum of Rs.7,75,260/- together with interest at 7.5% per annum from the date of petition till the date of realisation, for the multiple injuries sustained by the respondent/claimant, namely, head injury, fracture of right shoulder, fracture of nose and injuries in the right hand and right eyebrow, based on the evidence given by the three doctors, namely, P.W.2-Dr.Rajagopal who, after examining the fracture suffered by the claimant on the right shoulder, has certified the disability at 28%; P.W.3-Dr.Swaminathan who also, after examining the head injury, has certified the disability at 30% and P.W.4-Dr.Sivasubramanian has certified the disability at 20% for the fracture suffered by the claimant on her nose, thereby 78% permanent disability has been certified by the three doctors. On this basis, the Tribunal has worked out the compensation for the loss of future earning power at the rate of $\text{Rs.}4500 \times 12 \times 13 \times 78\% = \text{Rs.}5,47,560/-$ without adding any amount towards future prospects, although a sum of Rs.1,56,000/- towards permanent disability at the rate of Rs.2000/- per percentage of disability was given. Further, a sum of Rs.25,000/- towards pain and suffering, a sum of Rs.15,000/- towards extra nourishment, a sum of Rs.24,000/- towards medical expenses, apart from a sum of Rs.5,000/- towards transport

charges and Rs.2,700/- towards attendant charges, thus totalling a sum of Rs.7,75,260/- had been awarded by the Tribunal to the claimant.

2. Assailing the impugned award, learned counsel for the appellant-Transport Corporation submitted that the Tribunal, considering only the registration of First Information Report against the driver of the vehicle, has come to the conclusion that there was negligence on the part of the driver of the vehicle, however, after reaching its conclusion on the negligence part, has miserably failed to take into account the carelessness shown by the claimant, since she got down from the moving bus and invited the accident, which was also sufficiently proved by the appellant by examining their conductor as R.W.1, therefore the Tribunal, he pleaded, ought to have fixed the contributory negligence against the claimant. But ironically, swayed by the 78% permanent disability suffered by the injured claimant, the Tribunal has wrongly allowed the claim petition, therefore, the impugned award is liable to be set aside.

3. This Court is not able to see any merit in the contentions placed before this Court by the learned counsel for the appellant-Transport Corporation. On the date of accident i.e., 22.5.2011, when the respondent/claimant aged about 47 years was travelling as a passenger in the bus bearing Registration No.TN-45-N-1911 belonging to the appellant Corporation, at about 19.30 hours, she alighted from the said bus at the Udaiyar Street bus stop. But the bus driver made a quick start in a rash and negligent manner, as a result, the injured claimant lost her control and fell down on the road. Due to the sudden movement of the vehicle, she sustained grievous injuries, therefore, she was taken to the Government Hospital, Mannargudi. After first-aid treatment, she was referred to Thanjavur Medical College Hospital, Thanjavur. After sometime, she was advised to take treatment from M.R.Hospital, Thanjavur and after taking treatment for nine days as in-patient, it was found that the claimant has suffered 28% disability in the right shoulder. This has been properly explained by the doctor, who was examined as P.W.2, a specialist. Again the claimant had taken pains to adduce evidence through the two more expert doctors, namely, P.W.3, a neurologist, who had also certified the partial permanent disability at 30% on her head. One another doctor, who was examined as P.W.4, a specialist had also deposed that the claimant has suffered 20% partial permanent disability on her nose. Considering the evidence adduced by the three doctors, namely, P.Ws.2, 3 & 4 and the disability certificates issued by them, which were marked as Exs.P7, P9 & P11, the Tribunal has rightly reached the disability percentage at 78% suffered by the claimant. But the Tribunal, while assessing the loss of earning power based on the notional income and percentage of permanent disability suffered by the claimant, has failed to add any amount towards future prospects. Therefore, in my considered opinion, the award of Rs.7,75,260/-, being reasonable, has to be accepted as the just compensation. Hence this Court is of the view that the reasonable quantum of compensation awarded by the Tribunal requires no interference.

Accordingly, the civil miscellaneous appeal fails and the same is dismissed at the admission stage. Learned counsel for the appellant has fairly submitted that the appellant had deposited only the statutory amount of Rs.25,000/- at the time of filing the appeal. Therefore the appellant is directed to deposit the entire balance amount to the credit of the M.C.O.P.No.384 of 2012 before the Motor Accidents Claims Tribunal, Subordinate Judge, Mannargudi within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is entitled to withdraw the entire amount along with the accrued interest thereon by moving appropriate application before the Tribunal. Consequently, M.P.No.1 of 2015 is also dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ss

To

The Motor Accidents Claims Tribunal
Subordinate Judge
Mannargudi

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 66092

C.M.A.No.2650 of 2015

TEJ (CO)
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