

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.Nos.327 and 519 of 2011

Devi Bala @ Devakumari

.. Appellant in C.M.A.No.327 of
2011/Petitioner

S.Deva @ S.Deva Asirvatham

.. Appellant in C.M.A.No.519 of
2011/Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport
Corporation Limited,
No.3/137, Salamedu, Vazhudha
Reddy Post,
Villupuram - 605 602

..Respondent in C.M.A.Nos.327 and
519 of 2011/Respondents

Prayer :

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act against the award made in M.C.O.P.Nos.269 of 2008 & 268 of 2008 respectively dated 05.07.2010 on the file of Motor Vehicles Accident Claims Tribunal, Additional District Court, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

For Appellants : Mr.V.Jagannathan

For Respondent : Mr.S.Sairaman

C O M M O N J U D G M E N T

For the sake of convenience, the parties are ranked as stated before the tribunal.

2. The husband and wife, who are the injured in the accident occurred on 18.02.2008 are the appellants herein. Both the appeals are filed for enhancement of compensation of Rs.3,60,000/- against total claim of Rs.15,00,000/- and 93,000/- against total claim of Rs.5,00,000/- respectively. The facts that the husband and wife were travelling in a car driven by the husband, who is the appellant in C.M.A.No.519 of 2011 and the accident occurred due to rash and negligent driving of the bus belonging to the State Transport Corporation and both the husband and wife sustained grievous injuries and fractures in the accident and they were treated as in-patient in the hospital by incurring huge medical expenditure and because of the

injuries and fractures sustained in the accident, both of them suffered permanent disability are all not denied.

3.As far as the wife, who is the appellant in C.M.A.No.327 of 2011 is concerned, she was on the date of accident 24 years and was employed as beautician and she was earning Rs.5,000/- per month. The wife sustained multiple facial bone fracture and was under treatment at Government Hospital, Chengalpet and thereafter, at S.R.M.C., Porur between 18.02.2008 to 25.03.2008 and had been continuously under physiotherapy treatment. The claimant/ wife as P.W.1 in the witness box deposed that she was due to the fractures sustained by her not able to walk and do her normal avocation and suffered facial disfigurement and is unable to carry on her job as beautician and the same is also supported by P.W.2, Dr.Subramaniam, who treated and examined her to assess the degree of disability suffered by her.

4.The petitioner/claimant also produced Ex.P2, Accident Register, Ex.P.3, Discharge summary, Ex.P.4 - Sonogram report, Ex.P.5- C.T.Scan report, Ex.P.6- Death report, Ex.P.7 to Ex.P.10 - Medical Bills, Ex.P.11 - MVI report and Ex.P.12- Disability certificate and M.Os. 1 to 4 series in support of their case. The Tribunal on the basis of oral and adduced documentary evidence before the same assessed the disability as 50% and awarded compensation of Rs.3,60,000/- as follows:-

Sl.No.	Heads	Amount
01	Loss of Income	5,000
02	Medical Expenses	2,60,000
03	Transport to hospital	5,000
04	Extra Nourishment	20,000
05	Pain and Sufferings	20,000
05	Loss of future amenities for disability	50,000
	TOTAL	3,60,000

3.The learned counsel for the appellant would seriously argue before this Court that the compensation awarded under the heading of loss of income, transportation to hospital, extra nourishment and pain and sufferings is too low and inadequate. It is argued before this Court that the Tribunal has erred in awarding single compensation for Loss of Amenities and for permanent disability. It is argued before this Court that having regard to the nature of the permanent disability suffered and having regard to the nature of avocation of the claimant, the Tribunal ought to have awarded reasonable compensation separately for the permanent disability as well as for Loss of Amenities.

4.The learned counsel for the appellant has also drawn the attention of this Court to the error in the calculation of the

medical expenses incurred vide Exhibits P.7 to P.10, Medical Bills. It is pointed out while the total amount incurred vide the bills above referred to is Rs.2,28,970/- plus Rs.8,322/- plus Rs.74,289 = Rs.3,11,581/-, the same is wrongly mentioned as Rs.2,60,000/-

5.This Court finds greater force in the argument advanced on the side of the learned counsel for the appellant/wife. The Tribunal as rightly argued by the learned counsel for the appellant ought to have awarded reasonable compensation under the headings, Loss of Income, Extra Nourishment and Pain and sufferings and ought to have separately awarded compensation for loss of amenities and permanent disability. In view of the same, this Court is inclined to enhance the award of compensation for the injured wife.

6.As far as the husband is concerned, husband was on the date of accident aged about 28 years and sustained open fracture in right knee patula fracture on the right knee and abrasions on the head and skull besides other lacerated facial injuries. He was also also treated as inpatient originally in Government Hospital, Chengalpet and then at S.R.M.C., Porur for the period from 18.08.2008 to 22.02.2008. According to the petitioner, he was continuously under physiotherapy. It is further deposed that he is due to the fracture unable to walk and is unable to drive the car and as he was employed as car driver in Joseph Ambulance under one C.S.Vidyananth for monthly salary of Rs.6,000/- and other allowances of Rs.3,000/- per month, he was not able to continue his job and hence lost his earning capacity because of the permanent physical disability and the same is also supported by P.W.2, Doctor, who treated and examined him for the purpose of assessing his permanent disability. The documents produced on the claimant side in support of his case are Ex.P.2, Accident Register, Ex.P.3 - Discharge Summary, Ex.P.4 to Ex.P.6- Medical bills, Ex.P.7-Ultrasonogram and Ex.P.9-Disability certificate and MO1 and MO2 X-rays. The Tribunal on the basis of available evidence fixed his disability at 40%. The Tribunal did not in the absence of any materials believe the theory that he was employed as car driver for monthly income of Rs.6,000/- + Rs.3,000/- allowances . The Tribunal has however, on the basis of the findings rendered awarded compensation of Rs.93,000/- as follows:-

Sl.No.	Heads	Amount
01	Loss of Income	4,000
02	Medical Expenses	20,000
03	Transport to hospital	4,000
04	Extra Nourishment	10,000
05	Pain and sufferings	15,000
06	Loss of future disability	40,000
07	TOTAL	93,000

7. Here again it is argued on the side of the husband that the compensation awarded under specific heads is too low and inadequate and the Tribunal has erred in not awarding separate compensation for Loss of Amenities and for his disability.

8. This Court on the basis of available evidence is inclined to accept the contention so raised on the side of the husband. This Court is here again inclined to enhance the compensation. The compensation awarded to wife is thus enhanced as follows:-

Sl.No.	Heads	Amount
01	Loss of Income	10,000
02	Medical Expenses	3,11,581
03	Transport to hospital	10,000
04	Extra Nourishment	20,000
05	Pain and sufferings	50,000
06	Loss of amenities	50,000
07	Permanent disability	1,00,000
	TOTAL	5,51,581
	The same is rounded off as	5,50,000

Compensation is enhanced to the husband as follows:-

Sl.No.	Heads	Amount
01	Loss of Income	10,000
02	Medical Expenses	20,000
03	Transport to hospital	5,000
04	Extra Nourishment	20,000
05	Pain and sufferings	50,000
06	Loss of amenities	50,000
07	Permanent disability	80,000
	TOTAL	2,35,000

9. In the result, in C.M.A.No.327 of 2011, the compensation of Rs.3,60,000/- is enhanced to Rs.5,50,000/- payable with interest at 7.5% per annum from the date of claim petition till date of payment with appropriate cost. The time for payment of balance award amount is four months from the date of receipt of copy of Judgment and on such deposit of amount into court, the claimant is permitted to withdraw the entire amount by filing a cheque petition before the Tribunal. The Civil Miscellaneous Petition is accordingly allowed.

In the result, in C.M.A.No.519 of 2011 the compensation of Rs.93,000/- is enhanced to Rs.2,35,000/- payable with interest at 7.5% from the date of claim petition till the date of payment and

with costs. Time for deposit of balance award amount is four months from the date of receipt of copy of this Judgment. On deposit of amount into Court, the applicant is permitted to withdraw the entire amount by filing separate cheque petition before the tribunal and the Civil Miscellaneous Appeal is allowed accordingly. No costs.

-Sd/-

Assistant Registrar(cs-III)

//True copy//

Sub Assistant Registrar

ssd

To

The Motor Vehicles Accident Claims Tribunal and
Additional District Judge, and Session Judge,
Fast Track Court, No.1
Poonamallee.

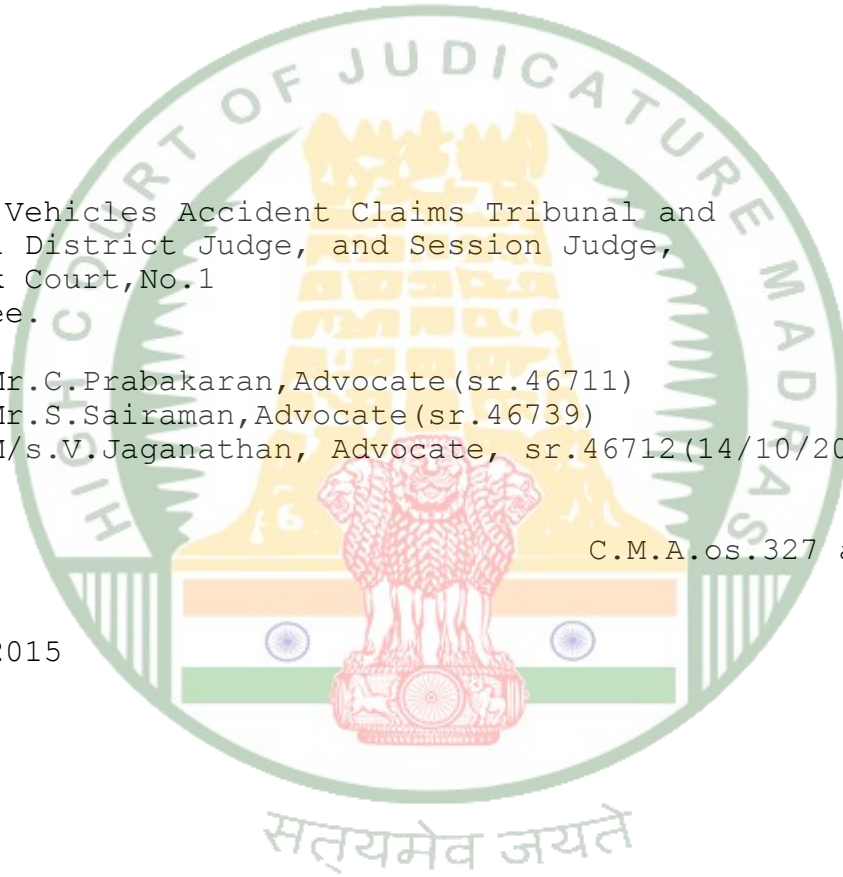
+1 cc to Mr.C.Prabakaran, Advocate (sr.46711)

+2 cc to Mr.S.Sairaman, Advocate (sr.46739)

+1 cc to M/s.V.Jaganathan, Advocate, sr.46712 (14/10/2015)

C.M.A.os.327 and 519 of 2011

UG(co)
cp 13/10/2015



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