

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.NO. 281 of 2011

Baishakhi Mohanta

.. Appellant/Petitioner

Vs.

Metropolitan Transport

Corporation Ltd.,

(Chennai Division)

rep. by its Managing Director

Pallavan Salai, Chennai - 600 002. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.06.2010 made in M.A.C.T.O.P No.693 of 2007 on the file of the IV Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr. N.M. Muthurajan

For Respondent : Mr. S.V.Vasantha Kumar

J U D G M E N T

The appellant has come forward with the present appeal, seeking enhancement of compensation, aggrieved by the lesser compensation of Rs. 34,500/- awarded by the IV Small Causes Court (Motor Accidents Claims Tribunal) Chennai, in M.A.C.T.O.P No.693 of 2007, on 17.06.2010.

2. The case of the appellant is that there was an accident on 01.01.2007 about 16.00 hours at T. Nagar Bus Terminus. The appellant deposed that there was negligence on the part of the bus driver, who alone is responsible for the accident. Due to the said accident, she sustained fracture on the head of 1st metatarsal left leg, apart from crush injuries and was treated in the Government hospital. Ex.P-4 states that the appellant had taken periodical treatment in Government Royapettah Hospital and the Doctor, who was examined as PW2, has assessed her disability at 20% as partial and permanent disablement. Even though, the trial court has accepted the disablement, the court has sanctioned only Rs.34,500/- against the claim of Rs. 6,00,000/- and that the claimant submitted that she has restricted her appeal claim to

Rs. 3,00,000/-

3. In support of the claim, the claimant was examined as P.W.1; Dr.K.J.Mathiazhagan was examined as P.W.2; and Ex.P-1 to Ex.P.6 were marked, the details of which are as follows:-

Ex. No.	Details
P1	Attested Copy of FIR in Cr.No.3/2007 of Pondy Bazaar Police station
P2	Attested Copy of Rough Sketch
P3	Attested Copy of Charge Sheet
P4	OP Chits issued by Govt. Royapettah Hospital
P5	X-Ray
P6	Disability certificate issued by PW.2

On behalf of the Transport Corporation, one Mr. K. Venkatesan, Conductor of the alleged bus was examined and no documents were marked before the Tribunal.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Heads	Amount granted by the Tribunal
1	Loss of earning	Rs. 3,000/-
2	Transport to Hospital	Rs. 3,000/-
3	Extra Nourishment	Rs. 3,000/-
4	Damage to clothing and materials	Rs. 500/-
5	Pain and Sufferings	Rs. 5,000/-
6	Permanent Disability	Rs. 20,000/-
	Total	Rs. 34,500/-

Though the Tribunal has granted compensation towards loss of earning, Transport charges, Extra Nourishment, Damage to articles, pain and suffering and for partial permanent disability, compensation under the heads 'medical expenses' and 'attender charges' have not been granted.

5. According to the learned counsel appearing for the appellant/claimant, the appellant who was working as a Chithal, met with an accident on 01.01.2007, while she was 30 years old, thereby she suffered fracture on the head of 1st Metersel left leg. She would contend that the compensation awarded by the Tribunal towards 'Pain and suffering' is too low. Even as per the assessment of P.W.2 Doctor, the appellant has suffered 20% partial and permanent disability and the award of Rs.20,000/- towards the same may be enhanced. Learned counsel further submitted that pursuant to the injuries sustained, the appellant is unable to walk fast or climb stairs and there is much difficulty in walking without the support and thereby she is unable to do her Chithal work.

Her activities of daily life, such as climbing the stairs, walking fast, etc., are also affected. Since her livelihood is affected, she seeks enhancement of compensation towards 'loss of earning power'. Though she took treatment as an in-patient only for one day, as an out-patient she had been taking treatment, for which she had to take the assistance of an Attender, but the Tribunal has erred by not granting any amount towards 'Attender Charges'. The amount sanctioned under other heads are also very low and hence, she seeks enhancement of the same.

6. Per contra, learned counsel appearing for the respondent/Transport Corporation submitted that the appellant/claimant is guilty of contributory negligence. The alleged injuries are simple in nature and that the Tribunal is fair and correct in granting the compensation. Based on the above, the learned counsel for the respondent/Transport Corporation sought for dismissal of the above Civil Miscellaneous Appeal.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. It is not in dispute that the alleged accident is of the year 2007. The Tribunal, having taken note of the fact that due to the accident, the claimant has sustained serious injury in her left leg apart from crush injury, as stated supra and having accepted the partial and permanent disability sustained by the claimant at 20%, ought not have granted a meagre amount of Rs.34,500/- as compensation.

9. In view of the ratio laid down by the Supreme Court in the case of Sarla Verma -Vs- Delhi Transport Corporation and another [2009 (6) SCC 121] and Rajesh vs. Rajbir Singh [2009 (9) SCC 54], this Court is of the view that the compensation awarded by the Tribunal under the heads mentioned above is very meagre. For a woman whose avocation is Chithal, legs are very important to carry on her job. The claimant herein is a Chithal and she has sustained severe injuries in her legs. Certainly, she will have difficulty to climb stairs while carrying cement, sand, bricks, etc. Though the claimant has restricted her claim of compensation to Rs.3,00,000/-, this Court finds it just and reasonable to enhance the same as could be seen in the tabular column given below:

Heads	Award of the Tribunal	Revised Award of this Court
Loss of earning	Rs. 3,000/-	Rs. 1,10,000/-
Transportation to Hospital	Rs. 3,000/-	Rs. 30,000/-
Extra Nourishment	Rs. 3,000/-	Rs. 50,000/-

Heads	Award of the Tribunal	Revised Award of this Court
Damages to clothing and materials	Rs. 500/-	Rs. 4,500/-
Pain and Suffering	Rs. 5,000/-	Rs. 50,000/-
Permanent Disability	Rs. 20,000/-	Rs. 60,000/-
Attender charges	--	Rs. 30,000/-
Total	Rs. 34,500/-	Rs.3,34,500/-

10. Accordingly, the award of the Tribunal is enhanced and the appellant/claimant is entitled to a sum of Rs.3,34,500/- (Rupees Three Lakhs Thirty Four Thousand Five Hundred only) as compensation. Since there is no objection in respect of the interest granted by the Tribunal at 7.5% per annum, the same is confirmed and the Civil Miscellaneous Appeal is allowed.

11. Learned counsel for the appellant/claimant submitted that the entire award amount has been deposited by the Transport Corporation and the same has also been withdrawn by the appellant/claimant. Hence, the respondent/Transport Corporation is directed to deposit the enhanced award amount of Rs.3,00,000/- along with accrued interest to the credit of M.A.C.T.O.P. No.693 of 2007 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the appellant/claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

No costs.

Sd/- सत्यमेव जयते

Assistant Registrar(CS IV)

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Sub Assistant Registrar

avr/aeb

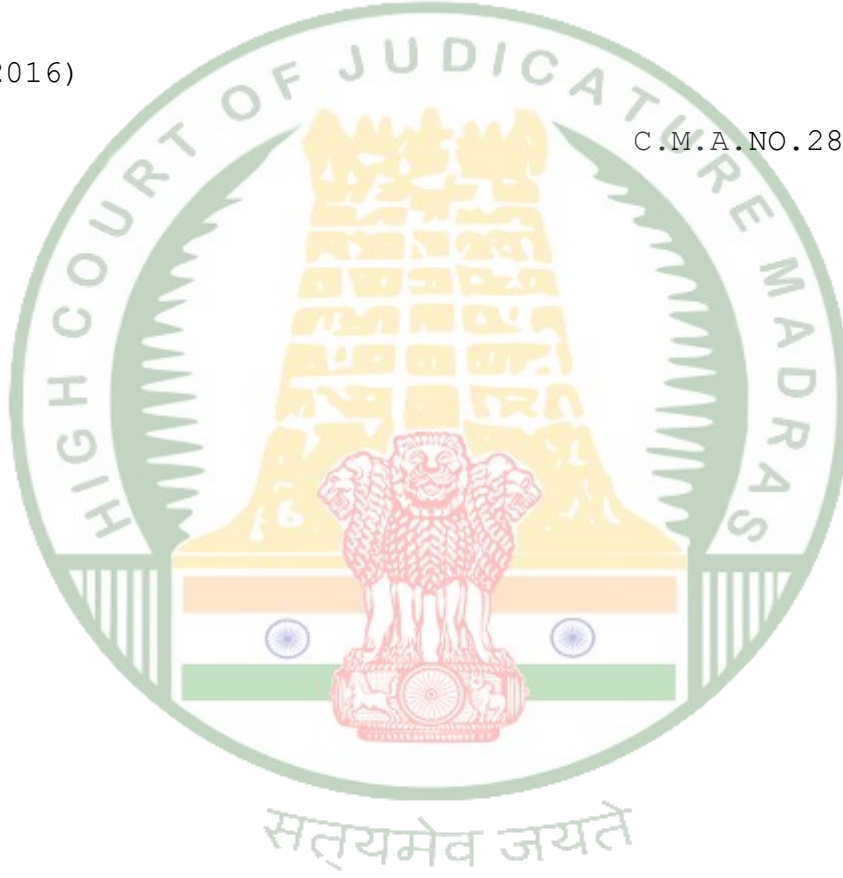
To :

The Judge,
IV Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

+1cc to Mr.S.V. Vasantha Kumar, Advocate, S.R.No.12679
+1cc to Mr.N.M. Muthurajan, Advocate, S.R.No.12326

JSV(CO)
EU(30/03/2016)

C.M.A.NO.281 of 2011



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