

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.2362 of 2014
& M.P.No.1 of 2015

The Managing Director
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai - 2.

..... Appellant/Respondent

- Vs -

Uma Chandran

..... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 06.12.2012 in M.C.O.P.No.338 of 2011, passed by the Motor Accident Claims Tribunal (II Court of Small Causes) Chennai.

For Appellants : Mr.S.Sivakumar
For Respondent : Mr.K.Varadha Kamaraj

JUDGMENT

(The Judgment of the Court was delivered by R.Sudhakar,J)

Transport Corporation is on appeal challenging the award passed by the Tribunal dated 06.12.2012 in M.C.O.P.No.338 of 2011, passed by the Motor Accident Claims Tribunal (II Court of Small Causes) Chennai.

2. It is a case of injury. On 08.12.2010 at 13.40 hours, when the injured Uma Chandran was travelling as a passenger in the bus belonging to the appellant herein bearing Registration No.TN-01-N-4458 at Velacherry Main Road, proceeding from North to South, the driver of the bus drove the same in a rash and negligent manner and suddenly turned, as a result, the injured Uma Chandran was thrown out of the bus and sustained grievous injuries. Hence, the injured Uma Chandran, claimed compensation of Rs.15.00 lakhs. According to the claimant, Uma Chandran, on the date of accident, she was doing textile business and was earning a sum of Rs.7,000 per month.

3. In support of the claim, the injured Uma Chandran was examined as P.W.1 and Dr.N.Saichandran, who treated the injured was examined as P.W.2 and Exs.P-1 to P-7 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of First Information Report in Cr.No.479/S3/2010 registered at Traffic Investigation
Ex.P-2	-	Copy of Accident Register
Ex.P-3	-	Discharge Summary
Ex.P-4	-	Medical Bills
Ex.P-5	-	C.T.Scan Films
Ex.P-6	-	C.T.Scan report
Ex.P-7	-	Disability Certificate

4. On the side of the appellant/Transport Corporation, one Thiru.C.N.Shanmugam, the driver of the Corporation bus was examined as R.W.1, however, no documents were marked.

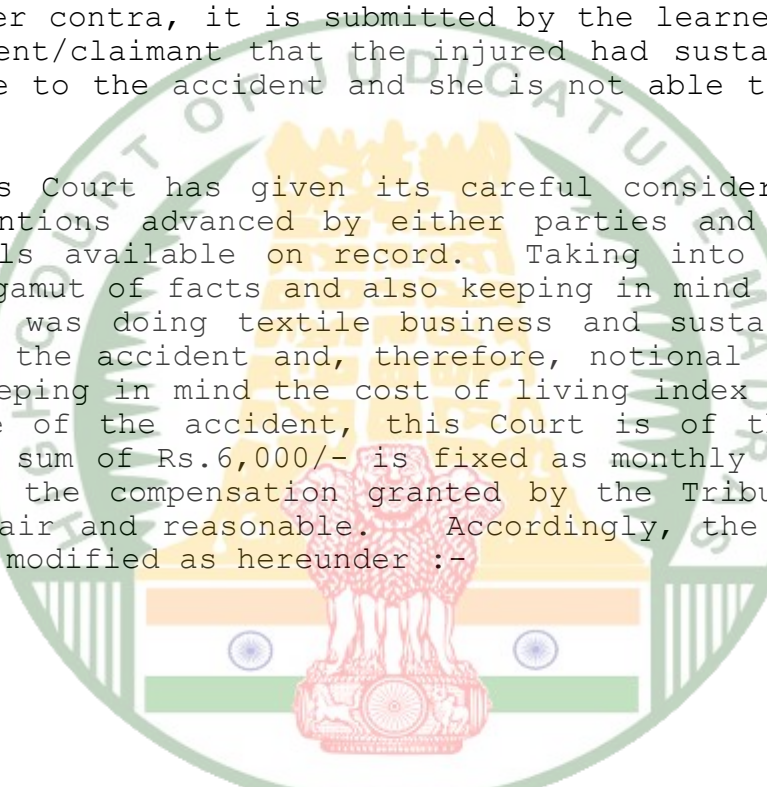
5. The Tribunal, based on the oral evidence of the witnesses to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant/transport Corporation to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the appellant herein and consequently the appellant-Transport Corporation was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of income for 12 months	-	Rs. 84,000/-
Transportation	-	Rs. 10,000/-
Extra Nourishment	-	Rs. 10,000/-
Medical Expenses	-	Rs. 3,43,100/-
Attender Charges	-	Rs. 25,000/-
Mental Agony to the petitioner, loss of amenities of life and loss of enjoyment in life	-	Rs. 50,000/-
Pain and Suffering	-	Rs. 50,000/-
Towards Permanent Disability (Rs.7,000/- x 12 x 11 x 80%)	-	Rs. 7,39,200/-
Total	-	Rs.13,11,300/-

6. In all, the Tribunal awarded a compensation of Rs.13,11,300/- with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the Transport Corporation is before this Court by filing this appeal.

7. The only point raised by the learned counsel appearing for the appellant-Transport Corporation is that the income fixed is on the higher side, as admittedly, the injured was doing textile business and was not earning the amount as stated in the claim petition and, therefore, the notional income should have been fixed at Rs.4,000/- instead of Rs.7,000/- as fixed by the Tribunal. Per contra, it is submitted by the learned counsel for the respondent/claimant that the injured had sustained grievous injuries due to the accident and she is not able to do the work as before.

8. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Taking into consideration the entire gamut of facts and also keeping in mind the fact that the injured was doing textile business and sustained grievous injuries in the accident and, therefore, notional income has to be fixed keeping in mind the cost of living index prevailing as on the date of the accident, this Court is of the considered view that a sum of Rs.6,000/- is fixed as monthly income of the injured and the compensation granted by the Tribunal on other heads are fair and reasonable. Accordingly, the award of the Tribunal is modified as hereunder :-



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Head of compensation	Amount granted by the Tribunal	Amount modified by this Court
Loss of income for 12 months	Rs. 84,000/- (Rs.7000 x 12)	Rs. 72,000/- (Rs.6,000 x12)
Transportation	Rs. 10,000/-	Rs. 10,000/-
Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
Medical Expenses	Rs. 3,43,100/-	Rs. 3,43,100/-
Attender Charges	Rs. 25,000/-	Rs. 25,000/-
Mental Agony to the petitioner, loss of amenities of life and loss of enjoyment in life	Rs. 50,000/-	Rs. 50,000/-
Pain and Suffering	Rs. 50,000/-	Rs. 50,000/-
Towards Permanent Disability	Rs. 7,39,200/- (Rs.7,000/- x 12 x 11 x 80%)	Rs. 6,33,600/- (Rs.6,000/- x 12 x 11 x 80%)
Total	Rs.13,11,300/-	Rs.11,93,700/-

9. Accordingly, this Civil Miscellaneous Appeal is disposed of in the following manner:

(i) The award of the Tribunal is reduced from 13,11,300/- to Rs.11,93,700/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) Learned counsel appearing for the appellant submits that as per the order passed by this Court dated 15.09.2014, directing the appellant to deposit the entire award amount, the appellant has deposited the same.

(v) the injured claimant is permitted to withdraw the amount now modified by this Court.

(vi) the appellant/Transport Corporation is permitted to withdraw the balance amount lying in deposit.

(vi) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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1. The II Judge,
Small Causes Court,
Motor Accident Claims Tribunal, Chennai.

2.The Record Keeper,
V.R. Section, High Court, Madras.

+1 cc to Mr.S.Sivakumar Advocate sr.16414

+1 cc to Mr.K.Varadha Kamaraj Advocate sr.15749

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