

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2215 of 2013

M.Revathi

.. Appellant

Versus

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Bharathipuram, Dharmapuri.

.. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.02.2012 made in M.C.O.P.No.283/2009 on the file of the Motor Accidents Claims Tribunal, (Special Judge), Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For respondent : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the correctness of the impugned award dated 08.02.2012 made in M.C.O.P.No.283/2009 on the file of the Motor Accidents Claims Tribunal, (Special Judge), Krishnagiri.

2.It is the case of the claimant that on 13.11.2008 at about 18.30 hours, when the claimant was travelling as a pillion rider in the Hero Honda Splendor Motor Cycle, bearing Registration No.TN-24/A-4576 and her husband Veerabathiran was riding the said motor cycle, in the Varattanapalli to Krishnagiri road, a bus bearing Registration No.TN-29-N-1796, belonging to the respondent/Transport Corporation drove the same in a rash and negligent manner and dashed forcibly on the said motor cycle and caused the accident. Due to the impact, the said Veerabathiran sustained fatal injuries and died on the spot itself. The appellant/claimant sustained injuries and fractures on her right leg, right hand and head injury and other multiple injuries all over her body. Immediately after the accident, the appellant/claimant was taken to Government Hospital, Krishnagiri and admitted there as inpatient. Afterwards, she was referred to St. John's Medical College Hospital, Bangalore for further treatment. According to the claimant, the accident was happened due to the rash and negligent driving of the driver of the bus.

3.Learned counsel appearing for the appellant/claimant would submit that the learned Tribunal, having seen that the appellant had sustained injuries and fractures on her right leg, right hand and head injury and other multiple injuries all over her body and also admitted the fact that the appellant was admitted as inpatient for taking treatment from 15.11.2008 to 19.11.2008 and

considering the disability certificate, which was marked as Ex.P.5, issued by P.W.2/Dr.Devendiran, who had examined the appellant/ claimant clinically, certifying the disability at 35%, has reduced the disability at 20%. Learned Tribunal has committed yet another mistake in fixing the percentage of disability at Rs.2,000/- per percentage. Adding further, he would submit that since the appellant was an Agriculturist, the learned Tribunal has not fixed the fair and reasonable compensation. Therefore, he prays for reasonable enhancement.

4.Opposing the above prayer, learned counsel appearing for the Transport Corporation would submit that although the Doctor, who examined the appellant, had issued disability certificate, certifying 35% disability, it is always open to the learned Tribunal to consider the same on merits as to how much would be the percentage of disability suffered by the appellant. He would further submit that only after examining the evidence adduced by the said Doctor and also the disability certificate marked as Ex.P5, learned Tribunal has rightly fixed 20% disability.

5.But this Court is not able to find any merit on the contention made by the learned counsel for the respondent/Transport Corporation. The evidence of P.W.2/Dr.Devendran along with the disability certificate marked as Ex.P5 and

the discharge summary marked as Ex.P2, issued by St. John's Hospital, are conjointly perused. The nature of injuries sustained by the claimant has been given as under:

“... she had suffered fracture of the right lateral malleolus for which she had been managed conservatively with analgesics, physiotherapy and arm-sling BK slab has been applied to her. She had been in admission from 15.11.2008 to 19.11.2008. The Dr.Devendiran had examined her clinically and issued the disability certificate, is examined as P.W.2. A perusal of his oral evidence and the disability certificate do reveal that, she suffers from a non union of the lateral malleolus and post traumatic arthritics and that she requires a surgery in future due to the non union of the fracture bone. So, he would assess her disability at 35%. Considering the disability with respect to her whole body. ...”

6.The appellant, who already lost her husband in the said accident, had suffered 35% disability, as per disability certificate issued by the said Dr.Devendiran, who was examined as P.W.2. The learned Tribunal, in my considered opinion, ought not to have reduced the disability at 20%. Therefore, considering the nature of injuries sustained by the appellant and accepting the disability certificate, issued by the said Dr.Devendran, who has assessed the same at 35%, this Court hereby fixes the disability at 35%. The learned Tribunal has also committed error in fixing percentage of disability at Rs.2,000/- per

percentage, which needs modification, as the same is not in consonance with the ratio laid down by this Court in the case of **National Insurance Company Ltd. v. G.Ramesh and another** reported in 2013 (2) TN MAC 583. The relevant portion of the said judgement is given as under:

“6.Considering the fact that the claimant is a youngster, aged 23 years, having suffered fracture of tibia and fibula bones and taking note of the fact that chances of recovery are bright at such age, this Court is inclined to interfere with the award of the Tribunal. However, this Court is of the view that acceptance of a sum of Rs.2,000/- per percentage of disability is incorrect, given the present day cost of living. It would be more appropriate to accept Rs.3,000/- per percentage of disability.”

7.In the light of the above judgment, Rs.2,000/- per percentage of disability fixed by the learned Tribunal, is modified at Rs.3,000/- per percentage of disability, which comes Rs.1,05,000/- (35 x 3000). Therefore, Rs.40,000/- awarded towards temporary disability is modified at Rs.1,05,000/- and the amount awarded under the other heads are confirmed. The appellant-Insurance Company is directed to deposit the modified amount Rs.1,43,095/- with interest at 9% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the modified amount, on making proper application.

T.RAJA, J.

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8.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

20.09.2016

Index : Yes / No
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To

1.Motor Accidents Claims Tribunal,
(Special Judge), Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A. No.2215 of 2013