

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1384 of 2009

S.Chitra

...

Appellant/Petitioner

Vs.

1. M.Chinnadurai

2. Tamil Nadu State Transport Corporation,
Kumbakonam Division II Ltd.,
Rep. by its Managing Director,
Periya Milaguparai,
Trichy.

3. R.Kannan

4. C.Ravindran

5. The New India Assurance Co. Ltd.,
Rep by its Branch Manager,
149, Barathiar Road,
Karaikal ... Respondents/Respondents
(Respondents 1,3 & 4 remained absent and
set exparte by the lower Court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1989, against the order and decree dated
17.09.2008 made in MACTOP.No.222 of 2007 on the file of the
Court of the Motor Accident Claims Tribunal (ADJ) at Karaikal.

For Appellant :Mr.R.Vasudevan
for Mr.T.Susindran

For Respondents :Mr.S.V.Vasantha Kumar [R2]
R1, R3 & R4 - Exparte

JUDGMENT

Claimant, who is dissatisfied with the quantum of
compensation awarded by the Motor Accident Claims Tribunal in
MACTOP.No.222 of 2007 has come forward with this appeal seeking
enhancement of compensation.

2. On 04.12.2016, the appellant/claimant while was
travelling as a passenger in a private bus suffered injuries
when it collided with a bus belonging to the Tamil Nadu State

Transport Corporation. The claimant aged 19 years old at that relevant time, had her right hand crushed above the elbow and she had underwent a few corrective surgeries in JIPMER Hospital, Puducherry. She was working in the business establishment of P.W.3, where she was paid a daily wage of Rs.90/- per day. Seeking compensation on various heads including loss of marital prospects, the appellant moved the Tribunal with a claim of Rs.7,00,000/-, whereas the Tribunal has determined the compensation at Rs.2,50,000/- payable with interest @ 7.5% per annum. On the head of permanent disability, the Tribunal even though chose to rely on Ext.P-6 disability certificate issued by P.W.2 (doctor) who assessed the disability at 90%, yet it granted only consolidated sum of Rs.1,00,000/-. For loss of pain and suffering and extra nutrition, it has granted a consolidated sum of Rs.36,500/-. For the loss of marital prospects, appellant was granted Rs.1,00,000/-. Being dissatisfied, primarily with the compensation paid on the head of loss of income arising out of permanent disability, the appellant has moved this Court with the present appeal.

3. The learned counsel for the appellant submitted that the medical evidence was to the effect that the right hand of the claimant below her elbow was literally crushed and according to P.W.2, this injury has also affected her nerve so much so the functioning of her right hand is no more in her control. This implies that her right hand has suffered 100% functional disability. She being an ordinary labourer, given only to menial job, loss of utility of her hand implies that her prospects of earning or engaging in any avocation profitably is totally jeopardised. The learned counsel added that she was hospitalized for close to two months and the compensation awarded on the head of pain and suffering is found to be inadequate.

4. I find merit in the submissions of the learned counsel for the appellant. Based on Ext.P-18 salary certificate issued by PW.3, the Tribunal determined the monthly income of the claimant at Rs.2,250/- I am satisfied that the nature of injury to her right hand is such that she could not use it for any profitable activity. Given the fact that she was only 19 years at the relevant time, the appropriate multiplier to be applied is 18. Accordingly, the total compensation payable on the head of loss of future earning capacity would be $\text{Rs.2,250} \times 12 \times 18 = \text{Rs.4,86,000/-}$; for pain and suffering I award Rs.50,000/-; for nourishment I award Rs.5,000/-; for transport I award another Rs.5,000/-. For loss of marital prospects, I retain Rs.1,00,000/- awarded by the Tribunal. In total, the appellant/claimant is entitled to obtain Rs.6,46,000/- as compensation.

5. The Tribunal has found that the drivers of both the buses involved in the accident have contributed in equal terms for its occurrence and has apportioned the liability at the same percentage. The Insurance Company of the private bus namely the New India Assurance Co. Ltd., the 5th respondent has been served with notice, but it chose not to appear and opted to stay ex parte. This Court does not want to interfere with the percentage of negligence as was determined by the Tribunal and both the second respondent and fifth respondent are liable to pay the sum now determined as just and fair compensation in equal terms.

6. In the result this appeal is allowed and the compensation amount payable is enhanced from Rs.2,50,000/- to Rs.6,46,000/- payable with interest @ 7.5% per annum and both the second respondent and fifth respondent are directed to bear the liability at 50% each and both of them are directed to deposit the said enhanced amount with accrued interest, less any amount already deposited within four months from the date of receipt of a copy of this order, whereupon the claimant is entitled to withdraw the same forthwith. The claimant shall pay necessary court fee for the enhanced amount.

s/d-
Assistant Registrar (CO)

//True Copy//

Sub-Assistant Registrar

To:

1. The Motor Accidents Claims Tribunal,
Additional District Court,
Karaikal.
2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr. T. Susindran, Advocate sr 1225

+1 CC to Mr. S.V. Vasanthakumar, Advocate sr 1204

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GJ(CO)
sp/14/2