

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1237 of 2015

Baby Ammal

... Appellant/Complainant

Vs

The Tamil Nadu State Government
Transport Corporation,
rep. by its Managing Director
Tiruvannamalai.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 17.8.2012 passed in M.C.O.P.No.61 of 2009 by the Motor Accidents Claims Tribunal, Arni.

For Appellant : Mr.P.Satheesh Kumar

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

Calling into question the decree and judgment dated 17.08.2012 passed in M.C.O.P.No.61 of 2009 by the Motor Accidents Claims Tribunal, Arni, the present Civil Miscellaneous Appeal is filed.

2. The facts in a nutshell are as under: The claimant is the appellant herein. It is the case of the appellant, who is the injured, that on 11.1.2009 at about 10.15 PM, when the appellant was proceeding as a pillion rider in a TVS 50 vehicle bearing registration No.TN-23-W-4985 along with her husband in Vellore Arni Road, a passenger bus bearing registration No.TN-23-N-1735, which belongs to the respondent, came in a rash and negligent manner in high speed from Vellore to Tiruvannamalai, and the bus hit the appellant's two wheeler which was on the mud road and as a result of the collision, the appellant fell down and sustained multiple injuries all over the body, which resulted in her permanent disability.

3. It is the case of the appellant that her entire family is depending on her income and due to the injuries sustained by her, she is unable to do any work. Therefore, the appellant filed a claim petition seeking compensation of Rs.3 lakhs.

4. The respondent Corporation in the counter affidavit filed before the Tribunal denied the manner of accident and further stated that the driver of the bus drove the bus strictly observing the traffic rules and he was not responsible for the accident. The respondent Corporation further stated that the driver of the motorcycle did not possess valid driving licence and was not wearing helmet at the time of accident. They also disputed the age, occupation, monthly income and the nature of injuries sustained by the appellant. They prayed for dismissal of the claim petition.

5. The learned Tribunal, by decree and judgment dated 17.8.2012 passed in M.C.O.P.No.61 of 2009 awarded compensation of Rs.68,440/-.

6. Seeking enhancement of compensation, the unsatisfied claimant has filed this appeal.

7. It is the contention of the learned counsel appearing on behalf of the appellant that inasmuch as she suffered 35% permanent disability and suffered head injury (fracture) and other blood injuries, the Tribunal ought to have awarded compensation for the permanent disability and loss of future earning.

8. He further contended that inasmuch as the appellant was only 40 years old and sustained 35% permanent disability and she was earning monthly income of Rs.3000/-, the Tribunal ought to have awarded loss of future earning to the tune of Rs.1,00,000/-. He also submitted that the Tribunal as against the claim of Rs.3 lakhs has awarded a meagre sum of Rs.68,440/- and the same needs enhancement.

9. Per contra, the learned counsel appearing on behalf of the respondent Corporation reiterated the reasons that weighed with the Court below and prayed for dismissal of this appeal.

10. I have heard Mr.P.Satheesh Kumar, learned counsel appearing for the appellant and Mr.K.J.Sivakumar, learned counsel appearing for the respondent and also perused the materials available on record.

11. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for

the reason that these things are recorded in favour of the appellant and secondly, none of those findings are under challenge. Only the quantum of compensation is under challenge by the appellant.

12. According to the appellant, in the accident she sustained fracture on her head and also blood injuries all over the body. In her evidence P.W.1 deposed that in the accident she sustained multiple injuries all over the body and also injury on both legs, hand and hip. She also sustained fracture of skull bone. After the accident, she was admitted in Government VMC Hospital, Vellore, where she had taken treatment for three days. Thereafter, she had taken treatment in CMC Hospital, Vellore and still continuing treatment privately. P.W.1 further deposed that due to injuries, she is unable to do her normal work.

13. P.W.2-Dr.Shanmugasundaram examined the appellant and issued Ex.P3-disability certificate assessing the disability as 35%. Fixing the notional monthly income of the appellant at Rs.3,000/- and taking the disability as 35%, the Tribunal calculated Rs.55,440/- towards loss of earning. Since the appellant sustained fracture of skull bone, the Tribunal ought to have granted more amount. Moreover, Ex.P3-disability certificate has not been disputed by the respondent.

14. Considering the nature of injuries sustained by the appellant in the accident and taking note of fact that P.W.2-Doctor assessed the disability as 35% and also following the decision of the Hon'ble Apex Court in National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, this Court feels that it would be appropriate to take Rs.3,000/- per percentage of disability. Accordingly, a sum of Rs.1,05,000/- is awarded towards disability in the place of Rs.55,440/- awarded by the Tribunal under the head loss of earning.

15. The Tribunal awarded Rs.10,000/- for pain and suffering; Rs.2,000/- for transport charges and Rs.1,000/- for damages to cloths. Considering the nature of injuries sustained by the appellant, Rs.10,000/- awarded by the Tribunal for pain and suffering is reasonable and the same is maintained. As far as the amounts awarded for transport charges and damages to cloths are concerned, the same are reasonable and maintained. Thus, the total compensation of Rs.68,440/- awarded by the Tribunal is enhanced to Rs.1,18,000/-.

16. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.68,440/- awarded by the Tribunal is enhanced to Rs.1,18,000/-. The respondent is directed to deposit the

enhanced compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.61 of 2009 on the file of the Motor Accident Claims Tribunal, Arni. On such deposit, the appellant is permitted to withdraw the entire amount with accrued interest on filing proper cheque application before the Tribunal.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal, Arni.

Copy To
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.P.Satheesh Kumar, Advocate SR.No.66607

Civil Miscellaneous Appeal No.1237 of 2015

SV (CO)
GMY (29/05/2019)

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