

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1218 of 2016

Angayee

..Appellant/Petitioner

Versus

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

..Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2015 made in M.C.O.P.No.420 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee.

For Appellant : Mr.P.Natarajan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The Appellant/Claimant has filed this appeal against the judgment and decree dated 09.10.2015 made in M.C.O.P.No.420 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 07.10.2011 at about 14.15 hours while the petitioner was boarding the respondent/Transport Corporation bus bearing Registration No.TN-01-N-5114 in Vadapalani bus terminus, without noticing the same, the driver of the respondent/Transport Corporation bus in Route No.12 B suddenly moved the bus, resulting in the petitioner and her relative falling down from the bus, wherein the petitioner suffered grievous multiple injuries and the relative sustained fatal injuries. The accident occurred only due to rash and negligent act of respondent bus driver. At the time of the accident, the petitioner was carrying on business as vegetable

vendor and would have earned upto Rs.7,000/- to Rs.9,000/- per month. Due to injury suffered by her, she is not able to carry on the said avocation. Thus, the petitioner suffered loss of income due to permanent disability, caused by the injury, suffered in the above said accident. Hence, the petitioner seeks a sum of Rs.3,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioner. The respondent bus was in its regular trip in Route No.12 B and at about 14.10 hours the respondent driver started the bus from Vadapalani bus depo and at that time a group of passenger rushed in at high speed to board the bus. On seeing that the driver and conductor shouted at them to board the bus; after the same was halted, but, without listening to the same, two female passenger tried to board the bus and fell down as they were unable to balance themselves. Thus, the accident occurred only due to negligence of the said two persons. The respondent bus driver is no way responsible for the occurrence. The claim of the petitioner regarding her age, avocation and income is denied. The quantum claimed by the petitioner is exorbitant. Thus, the respondent/Transport Corporation seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and the medical expert as P.W.2 and produced documents Exs.P.1 to P.12 to prove her claim. The respondent examined the driver of the bus as R.W.1 but did not produce any documents. The Tribunal, on the basis of available evidence on record found negligence on the part of the bus respondent driver alone caused the accident and awarded a sum of Rs.1,23,521/- as compensation to the petitioner. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the petitioner/claimant contends that the Tribunal erred in fixing the monthly income of the deceased. The evidence of P.W.1 and P.W.2 was not properly appreciated by the Tribunal. The amount awarded under different heads is very low. Thus, the petitioner/claimant seeks to enhance the quantum of award by allowing this appeal.

7. Per contra, the learned counsel for the respondent/Transport Corporation contends that the Tribunal without appreciating the evidence on record properly, has awarded higher amount as compensation and as such, no ground is made out for the petitioner/claimant to seek enhancement of the same. Thus, the respondent/Transport Corporation seeks dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The Tribunal has fixed the negligence on the part of respondent driver as the cause for the accident. Before this Court, the issue of negligence is not seriously disputed. The respondent/Transport Corporation has not preferred any Cross Objection. The only issue agitated before this Court is the quantum of the award passed by the Tribunal. As such, the finding of the Tribunal based on the oral evidence of P.W.1 as well as Ex.P.1 - F.I.R that the negligence of the respondent bus driver alone caused the accident, is just and proper.

10. The petitioner who deposed as P.W.1 stated that she suffered fracture in her right leg and various multiple injuries all over her body. After getting treated in the Vijaya health Centre, she took treatment in a Private Hospital in Ashok Nagar and to prove the same she produced the medical records of Vijaya Health Centre and Spot Hospital as Exs.P.2 and P.3 respectively. She also produced the copy of the Scan report as Exs.P.4 and P.5. It is evident from the available records that the petitioner suffered fracture as well as various injuries. The Doctor, who examined the petitioner and assessed the disability suffered by her, deposed as P.W.2. According to P.W.2, he took X-Ray and personally examined the petitioner before fixing the disability. P.W.2 stated that the petitioner's right shoulder movement is reduced and she is unable to lift any object. According to P.W.2, there is malunion of fractured bones and thus, he fixed the permanent disability as 40% as per Ex.P.10 - Disability Certificate issued by him. On the basis of P.W.2 oral evidence as well as Ex.P.10 - Disability Certificate, the Tribunal fixed the permanent disability suffered by the petitioner at 40% and awarded a sum of Rs.2,000/- per percentage. The learned counsel for the petitioner contends that the Tribunal ought to have awarded Rs.3,000/- per percentage instead of Rs.2,000/-. The learned counsel for the respondent/Transport Corporation has no serious objection for the same, as such, the disability suffered by the petitioner is fixed at 40% and she is entitled to be compensated at Rs.3,000/- per percentage. As nothing is available on record to show that the petitioner suffered any functional disability, the Tribunal, is justified in applying only percentage method and not multiplier method. In the appeal also no ground is made out by the petitioner to modify the same by applying multiplier method. However, considering the nature of injury suffered by the petitioner and the business carried on by her, it will be appropriate to award Rs.3,000/- per percentage instead of Rs.2,000/- given by the Tribunal. As such, loss due to disability is calculated as follows,

Rs.3,000 x 40% = Rs.1,20,000/-

11. The petitioner being a vegetable vendor would have easily earned Rs.6,000/- per month. Due to injury suffered by her she would not have carried on his business at least for 3 months and hence the loss of income is calculated as under:-

Rs.6,000 x 3 = Rs.18,000/-

Thus, a sum of Rs.18,000/- is granted as compensation under the head "Loss of Income".

12. Considering the nature of injury suffered by the petitioner she would have suffered Pain and Suffering, the Tribunal awarded Rs.20,000/- for the same. This Court, find no reasons to interfere with the same. Further, this Court finds that it would be appropriate to give Rs.15,000/- towards extra nourishment and Rs.10,000/- towards Transport Charges. Hence, for the above said reasons, the amount of compensation payable to the petitioner is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Disability	Rs.80,000.00	Rs.1,20,000.00
2	Pain and Suffering	20,000.00	20,000.00
3	Hospital Expenses	8,521.00	8,521.00
4	Transportation	5,000.00	10,000.00
5	Extra Nourishment	5,000.00	15,000.00
6	Loss of Income	5,000.00	18,000.00
7	Damages of Clothes	-	2,000.00
8	Loss of Amenities	-	10,000.00
9	Total	1,23,521.00	2,03,521.00

13. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.2,03,521/- from Rs.1,23,521/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) Appellant/claimant shall pay necessary court fee, if any before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-

Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

bri

To

1. THE MANAGING DIRECTOR,
METROPOLITAN TRANSPORT CORPORATION LTD.,
PALLAVAN HOUSE, ANNA SALAI, CHENNAI 2.

2. THE III ADDITIONAL DISTRICT JUDGE,
TIRUVALLUR.

3. THE SECTION OFFICER,
V.R. SECTION, HIGH COURT, MADRAS. (2 COPIES)

+1cc to Mr. S. SIVAKUMAR, Advocate, S.R.No.18661

+1cc to Mr. P. NATARAJAN, Advocate, S.R.No. 18662

सत्यमेव जयते

C.M.A.No.1218 of 2016

RV (CO)

TR (21/05/2018)

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