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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.NO.3260 of 2011

E.Saraswathi

... Appellant/Petitioner

Vs

Tamil Nadu State Express Transportation
Corporation Ltd.,
Division - I, Pallavan Salai,
Chennai - 600 002. rep. by its Managing Director

... Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Judgment and Decree in MCOP.No.1988 of 2006 dated 28.02.2011 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 28.02.2011 passed by the Motor Accident Claims Tribunal (IVth Judge, Court of Small Causes, Chennai) in MCOP.No.1988 of 2006.

The brief facts leading to the filing of the instant appeal are as follows: 2. The Appellant sustained injuries as a result of an accident that took place on 22.08.2005 caused by a bus bearing registration No.TN01-N-6742 owned by the respondent Transport Corporation. The Appellant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.1988 of 2006 seeking a compensation of Rs.3,00,000/-. The Motor Accident Claims Tribunal by its Award dated 28.02.2011 in MCOP.No.1988 of 2006 directed the respondent to pay the Appellant a sum of Rs.82,800/- together with interest at the rate of 7.5% per annum



from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mr.A.Shanmugaraj, learned counsel for the appellant and Mr.K.J.Sivakumar, learned counsel for the respondent.

5. According to the learned counsel for the Appellant, the Tribunal ought to have applied the multiplier method in assessing the compensation payable to the Appellant. The learned counsel for the Appellant submitted that the Appellant was aged 38 years and was working as a construction worker, at the time of the accident. The learned counsel for the Appellant also submitted that the Appellant sustained fracture of left bimallelar and fracture of distal right radius. According to the learned counsel for the Appellant, due to the injuries sustained by her, the Appellant suffered loss of future earnings. According to the learned counsel for the Appellant, even now the Appellant is unable to walk freely without any support. The learned counsel for the Appellant further contended that even though the disability was assessed by the Doctor at 40%, the Tribunal without any basis, has assessed the disability of the Appellant only at 30% disability.

6. Per contra, learned counsel for the respondent Transport Corporation would submit that the Appellant has suffered only 30 % disability and therefore the Tribunal has rightly not applied the multiplier method in assessing the compensation payable to her. According to the learned counsel for the respondent, the compensation awarded by the Tribunal is a just compensation.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The age, avocation and the nature of injuries sustained by the Appellant have not been disputed by the respondent before the Tribunal.

b) The Tribunal under the impugned Award has assessed the compensation payable to the Appellant, accepting the statement in the claim petition that the Appellant was aged 38 years and was working as a construction labourer, at the time of the accident. The Appellant sustained fracture of left bimallelar and fracture of distal right radius which relates to left ankle and right forearm and is a grievous injury.

c) The Tribunal under the impugned Award, assessed the daily income of the Appellant at Rs.80/- and therefore, the monthly income of the Appellant works out to Rs.2,400/-. Considering the nature of injuries sustained by the Appellant, the Appellant



would certainly have found difficulty in doing her avocation, as a construction worker, for at least six months. But under the impugned Award, the Tribunal has awarded compensation towards loss of earnings to the Appellant only for a period of two months i.e., Rs.4,800/- (Rs.2,400 x 2). In the considered view of this Court, considering the nature of injuries sustained by the Appellant and her avocation, the compensation awarded towards loss of earnings has to be enhanced to Rs.14,400/- (Rs.2,400 X 6).

d) Regarding the contention of the learned counsel for the Appellant that the Tribunal ought to have applied the multiplier method while assessing the compensation, no contra evidence either orally or documentary has been produced by the Appellant before the Tribunal to establish that the Appellant, as a result of injuries, has suffered future loss of earnings. Therefore, this Court is in agreement with the findings given by the Tribunal that the multiplier method is not applicable for the facts of the instant case.

e) The Tribunal has awarded a sum of Rs.4,800/- towards loss of income, Rs.3,000/- towards Transport to hospital, Rs.2,000/- towards Extra Nourishment charges, Rs.3,000/- towards Medical Expenses, Rs.10,000/- towards Pain and Suffering and Rs.60,000/- towards Permanent disability, in all put together, the Tribunal awarded a total compensation of Rs.82,800/- to the Appellant.

f) This Court is of the considered view that the compensation awarded under the heads Transport to hospital and Extra Nourishment Charges is low. In the considered view of this Court, the compensation towards Transport to Hospital has to be enhanced to Rs.5,000/- and the compensation toward Extra Nourishment charges has to be enhanced to Rs.5,000/-.

g) Insofar as other heads of compensation awarded by the Tribunal are concerned, this Court does not find any scope for any interference.

8. In the light of the above observations, in the considered view of this Court, the compensation awarded by the Tribunal under the impugned Award has to be modified and enhanced as detailed below:

Head	Amount awarded by the Tribunal	Modified Award Amount
Loss of income	Rs.4,800/-	Rs.14,400/-
Transport to Hospital	Rs.3,000/-	Rs.5,000/-
Extra Nourishment	Rs.2,000/-	Rs.5,000/-
Medical Expenses	Rs.3,000/-	Rs.3,000/-
Pain and suffering	Rs.10,000/-	Rs.10,000/-



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Head	Amount awarded by the Tribunal	Modified Award Amount
Permanent disability	Rs.60,000/-	Rs.60,000/-
Total	Rs.82,800/-	Rs.97,400/-

9. In the light of the above observations, the Award amount is enhanced from Rs.82,800/- to Rs.97,400/- and the respondent is directed to deposit the Award amount, after deducting the amount already deposited, together interest at the rate of 7.5 % per annum from the date of claim till the date of deposit, to the credit of MCOP.No. 1988 of 2006 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.No.1988 of 2006 by filing an appropriate application.

10. Accordingly, the appeal is partly allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

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

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.72870

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.72701

C.M.A.No.3260 of 2011

PA(CO)
GSP(25/01/2019)