

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.527 of 2012 and 1007 of 2012 and

M.P.No.1 of 2012 and

C.M.P.No.11083 of 2018 in

C.M.A.No.1007 of 2012

K.Andal ...Appellant in C.M.A.No.527 of 2012/Claimant

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division III, Kancheepuram,
Kancheepuram district.

...Appellant in C.M.A.No.1007 of 2012

vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division III, Kancheepuram,
Kancheepuram district.

...Respondent in C.M.A.No.527 of 2012/
Respondent

K.Andal ...Respondent in C.M.A.No.1007 of 2012

Prayer in C.M.A.No.527 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed by the Motor Accidents Claims Tribunal (Small Causes Court No. III), Chennai in M.C.O.P.No.668 of 2007 dated 28.03.2011.

Prayer in C.M.A.No.1007 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai in M.C.O.P.No.668 of 2007 dated 28.03.2011.

For Appellant in : Mr.T.G.Balachandran
C.M.A.No.527 of 2012

For Appellant in : Mr.K.J.Sivakumar
C.M.A.No.1007 of 2012

For Respondent in : Mr.K.J.Sivakumar
C.M.A.No.527 of 2012

For Respondent in : Mr.T.G.Balachandran
C.M.A.No.1007 of 2012

C O M M O N J U D G M E N T

In C.M.A.No.527 of 2012, the appellant is the claimant in M.C.O.P.No.668 of 2007 on the file of the III Judge, Court of Small Causes, Chennai. The appellant/claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking a compensation of Rs.4,00,000/- for the injuries sustained by her in a road accident that took place on 29.01.2007. The Tamil Nadu State Transport Corporation, the respondent in the above said M.C.O.P. has filed C.M.A.No.1007 of 2012 questioning the quantum of compensation. The appellant/claimant filed C.M.A.No.527 of 2012 seeking for enhancement of compensation.

2.For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3.The brief case of the appellant/claimant is as follows:

On 29.01.2007, the appellant/claimant was travelling as a passenger in a bus bearing Registration No. TN 21 N 0718 belonging to the respondent along East Coast Road on Pondicherry - Chennai. According to the appellant/claimant, a lorry bearing Registration No. TN 21 T 7277 was parked on the left hand side of the road and the driver of the bus bearing Registration No. TN 21 N 0718 drove the bus rashly and negligently and hit the lorry from behind, as a result of which, the appellant/claimant sustained grievous injuries.

4.The respondent contested the claim petition by filing a counter. The Tribunal after analysing the evidence on record, awarded a sum of Rs.1,13,570/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Mr.T.G.Balachandran, learned counsel appearing for the appellant in C.M.A.No.527 of 2012 would contend that the appellant/claimant was a tailor by profession and was aged just 19 years on the date of the accident. He also contended that she has sustained a fracture of L1 Vertebra and also sustained a head injury. He would further contend that the appellant/claimant took treatment as an inpatient in a Government Hospital from 21.09.2007 to 10.02.2008 and that the Tribunal without considering the injuries sustained by the appellant/claimant and the partial permanent disability assessed by Dr.Saichandran (P.W.5), has awarded a meagre amount of Rs.70,000/- towards partial permanent disability. He would also

contend that since there is a functional disability, multiplier method should be adopted in the instant case.

6.A perusal of the medical records clearly shows that the appellant/claimant has sustained a fracture of L1 Vertebra and some injuries were found on the spinal cord as well as her head. Dr.Saichandran (P.W.5) has assessed the partial permanent disability as 35% and it cannot be said that the appellant/claimant was unable to do her work on account of the accident. Since there is no functional disability, multiplier method is not warranted in the present case. The appellant/claimant was aged just 19 years on the date of the accident, and therefore, Rs.3,000/- per percentage can be awarded for partial permanent disability and thus she is entitled to a sum of Rs.1,05,000/- towards partial permanent disability.

7.The contention of the learned counsel appearing for the appellant is that the appellant/claimant was earning a sum of Rs.2,689/- per month as a training tailor. Therefore, the income of the appellant/claimant is fixed as Rs.2,689/- per month. The appellant/claimant could not have been in a position to attend to her work at least for six months on account of the accident and therefore, a sum of Rs.16,134/- is awarded towards loss of income. Apart from this amount, the appellant/claimant is entitled to a sum of Rs.5,000/-, Rs.10,000/-, Rs.5,000/- and Rs.25,000/- towards transportation, extra nourishment, attender's charges and pain and sufferings respectively. The appellant/claimant is also entitled to a sum of Rs.15,000/- and Rs.500/- towards loss of amenities and damage to articles and clothing respectively. Apart from this amount, the appellant/claimant is entitled to a sum of Rs.10,000/- towards future medical expenses. The compensation awarded under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.1,05,000/-
2.	Loss of amenities	Rs.15,000/-
3.	Loss of income (3 months)	Rs.16,134/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.10,000/-
6.	Pain and sufferings	Rs.25,000/-
7.	Attender's charges	Rs.5,000/-

S.No	Head	Amount granted
8.	Damage of articles and clothing	Rs.500/-
9.	Future medical expenses	Rs.10,000/-
Total		Rs.1,91,634/-

8.In the result,

(i) The C.M.A.No.527 of 2012 is partly allowed.
No costs.

(ii) The C.M.A.No.1007 of 2012 is dismissed.
No costs. Consequently, the connected Miscellaneous Petitions are dismissed.

(iii) The compensation amount is enhanced from Rs.1,13,570/- to Rs.1,91,634/-. The appellant/claimant is directed to pay the court fee, if any, within a period of six weeks from today i.e., 06.12.2018 for the enhanced compensation amount and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The The Managing Director, Tamil Nadu State Transport Corporation Limited, Villupuram Division III, Kancheepuram, is directed to pay the enhanced compensation amount together with interest at the rate of 7.5% per annum on Rs.1,81,634/- from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.668 of 2007. On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following necessary procedures. No interest is awarded for future medical expenses (i.e., Rs.10,000/-).
mbi

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

To

1.The III Judge,
Court of Small Causes, Chennai.

+1cc to Mr. T.G.Balachandran, Advocate SR.No. 84057

+1cc to Mr.K.J.Sivakumar , Advocate SR.No. 84575

C.M.A.No.527 of 2012 and
C.M.A.No.1007 of 2012 and
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C.M.A.No.1007 of 2012

A.SK(14/02/2019)