IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3744 & 3570 of 2013
and M.P.No.1 of 2013 & C.M.P.No.10827 of 2018

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002. ... Appellant in CMA No.3744 of 2013 & Respondent in CMA No.3570 of 2013/Respondent

..Vs..

Mrs.N.Selvakumari ... Respondent in CMA No.3744 of 2013 & Appellant in CMA No.3570 of 2013/Petitioner

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree made in MCOP No.279 of 2009 on the file of Motor Accident Claims Tribunal (Additional District & Sessions Judge, Fast Track Court IV) at Chennai dated 10.02.2012.

For Appellant in CMA.No.3744/2013
& Respondent in CMA.No.3570/2013 : Mr.S.Sivakumar

For Respondent in CMA.No.3744/2013
& Appellant in CMA.No.3570/2013 : Mr.T.G.Balachandran

COMMON JUDGMENT

The Transport Corporation as well as the claimant have preferred separate appeals challenging the impugned award dated 10.02.2012 passed by the Motor Claims Accident Tribunal (Additional District & Sessions Judge, Fast Track Court IV), Chennai in MCOP.No.279 of 2009. The Transport Corporation has filed an appeal on the ground that the Tribunal has erroneously applied the multiplier method in assessing the compensation payable to the claimant. The claimant has filed an appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of the instant

appeals are as follows :

(i) The respondent in CMA.3744 of 2013 sustained injuries on 12.12.2008 as a result of an accident caused by a bus bearing registration No.TN-01-N-5611 owned by the Appellant/Transport Corporation. She preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.279 of 2009 under Section 163 A of the vehicles Act seeking a compensation of Rs.2,00,000/- and restricted to Rs.1,52,100/-.

(ii) The Motor Accident Claims Tribunal, by its award dated 10.02.2012 in M.C.O.P.No.279 of 2009, directed the appellant in CMA.No.3744 of 2013 to pay the claimant, a sum of Rs.99,600/- (Rupees Ninety Nine Thousand and Six Hundred Only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

(iii) Aggrieved by the award dated 10.02.2012 passed in MCOP.No.279 of 2009, the Transport Corporation has filed an Appeal in CMA No.3744 of 2013 and the claimant has filed an appeal in CMA No.3570 of 2013 seeking enhancement of compensation.

3. Heard Mr.S.Sivakumar, learned counsel for the appellant in CMA.No.3744 of 2013 & respondent in CMA.No.3570 of 2013 and Mr.T.G.Balachandran, learned counsel for the respondent in CMA No.3744 of 2013 & appellant in CMA No.3750 of 2013.

4. According to the learned counsel for the appellant in CMA No.3744 of 2013, the Tribunal ought not to have applied the multiplier method in assessing the compensation payable to the claimant. According to him, the Tribunal ought to have disbelieved the evidence of P.W.2 - Doctor, since he did not give any treatment to the claimant and further the disability certificate was issued only after three years from the date of the accident. Therefore, according to him, the quantum of compensation awarded by the Tribunal under the impugned award is excessive and arbitrary.

5. Per contra, the learned counsel for the respondent in CMA.No.3744 of 2013 and the appellant in CMA.3570 of 2013 would submit that the claimant had sustained fracture of left calcaneum (fracture of left ankle) and also sustained head injury as well as multiple injuries all over the body. Further, he submitted that the claimant was a tiffin vendor. According to him, since the claim was made under Section 163-A of the Motor Vehicles Act, in her claim petition, the claimant has disclosed that she was earning a monthly Income of Rs.3,250/- at the time of accident even though she was earning much more than that. As directed by this Court for assessing the just compensation, the

claimant is personally present before this court today. According to the learned counsel, considering the nature of injuries sustained by the claimant and her avocation at the time of the accident, the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the claimant.

6. The learned counsel further submitted that the Tribunal, without any basis, has assessed the permanent disability of the claimant at 20%, even though P.W.2 - Doctor has assessed the disability of the claimant at 30% and the disability certificate namely Ex.P4 was also marked. The learned counsel further submitted that the claimant was hospitalized for a long period of time. At the first instance, she was hospitalised on 12.12.2008 and after discharge on 13.12.2008, once again she was hospitalised on 18.12.2008 and discharged from the hospital only on 29.12.2008. The learned counsel also submitted that the respective discharge summaries from the hospital were also marked as Exs.P2 and P3 before the Tribunal. According to him, considering the nature of injuries sustained by the claimant and her avocation, the Tribunal ought to have assessed the monthly income of the claimant at a higher sum and ought to have assessed the disability at 30% as per the disability certificate, instead of 20%.

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 and after personally seeing the claimant, observes the following :-

a) Even now the claimant is able to walk only with the help of a walker. Even now, marks are seen in the left leg as well as swelling is found on her leg.

b) The nature of the injuries sustained by the claimant as stated in the claim petition as well as in her evidence before the Tribunal has not been disputed by the Transport Corporation before the Tribunal.

c) The avocation of the claimant at the time of the accident has also not been disputed by the Transport Corporation before the Tribunal. No contra evidence has been produced by the Transport Corporation to disprove the statement of the claimant that she was a tiffin vendor. Hence, the monthly income of the claimant is assessed as Rs.3,250/- instead of Rs.3,000/- assessed by the Tribunal. Being a Tiffen Vendor, the claimant will have to move from place to place. Due to the injuries sustained by the claimant, her mobility would have been drastically reduced. Therefore, in the considered view of this court, the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the claimant.

d) The claimant has produced the disability certificate which is marked as Ex.P4 before the Tribunal. As per the disability certificate, the Doctor has assessed the disability of the claimant at 30%. The claimant has sustained fracture of left calcaneum (fracture of left ankle). Today, this Court has also seen the claimant personally. Even after a lapse of almost 10 years from the date of the accident, the claimant is unable to walk without any support and she continues to use walker for the purpose of walking. Therefore, it is clear that the claimant has sustained grievous injuries, which has resulted in her immobility. The Tribunal, under the impugned award has assessed the disability at 20% even though P.W.2 - Doctor has assessed the permanent disability of the claimant at 30%. In the considered view of this Court, considering the nature of the injuries sustained by the claimant, the Tribunal ought not have assessed the disability at 20% without any basis. Therefore, this Court is of the considered view that the disability of the claimant has to be assessed at 30% as per the disability certificate, Ex.P4 filed before the Tribunal.

e) Excepting for the erroneous findings given by the Tribunal in assessing the disability of the claimant at 20% and assessment of monthly income at Rs.3,000/-, the compensation awarded to the claimant under other heads is perfectly in order and it does not call for any interference by this Court.

8. In view of the assessment of disability of the claimant at 30% and assessment of the monthly income at Rs.3,250/-, the compensation awarded by the Tribunal under the impugned award is enhanced to Rs. 1,52,100/- instead of Rs.99,600/- by this Court, as detailed below -

(a)	Monthly income ...	Rs.3,250/-
(b)	Age of the injured at the time of accident ...	50 years
(c)	Multiplier ...	13
(d)	Percentage of disability as per Ex.P4 - disability... certificate	30%

Compensation under the head permanent disability ... Rs.3,250 x 12 x 13 x 30%
Rs.1,52,100/-

9. In the light of the above observations, the appeal filed by the Transport Corporation in CMA No.3744 of 2013 does not deserve any merit and is dismissed and the appeal filed by the claimant in CMA.No.3570 of 2013 is allowed by enhancing the compensation awarded by the Tribunal from Rs.99,600/- to

Rs.1,52,100/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petitions are closed.

10. The Transport Corporation is directed to deposit the enhanced award amount alongwith interest @ 7.5% per annum from the date of petition till the date of deposit, to the credit of MCOP No.279 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Judge, Fast Track Court No.IV), Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the enhanced award amount alongwith the amount awarded by the Tribunal, if not already withdrawn, by filing an appropriate application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ggi/rgr

To

1. The Additional District & Sessions Judge,
   Motor Accident Claims Tribunal,
   Fast Track Court IV,
   Chennai.

+1cc to Mr.Sivakumar, Advocate, S.R.No. 72884
+1cc to Mr.T.G.Balachandran, Advocate, S.R.No. 72359

C.M.A.Nos.3570 & 3744 of 2013

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GN(26/12/2018)