

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2832 of 2011

Santhiya

... Appellant/Claimant

Vs

1.Chandrasekaran

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Chennimalai Road,
Erode.

...Respondents

(R-1 Driver of the bus remind Exparte before the Tribunal and
Hence notice to R-1 may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Award of the Motor
Accident Claims Tribunal (Addl. District Judge-cum-Fast Track
Court No.V), Coimbatore @ Tirupur M.C.O.P.No.17 of 2008 dated
31.01.2011.

For Appellant : Mr.S.Kaithamalai Kumaran
For Respondents : R1 - Exparte
: Mr.K.J.Sivakumar for R2

J U D G M E N T

The instant appeal has been filed by the claimant
challenging the quantum of compensation awarded by the Motor
Accident Claims Tribunal (Addl. District Judge-cum-Fast Track
Court No.V), Coimbatore at Tirupur in its Award dated
31.01.2011, passed in M.C.O.P. No.17 of 2008.

2.The brief facts leading to the filing of the instant
appeal are as follows:

(i)The Appellant sustained injuries on 07.07.2007, as a
result of an accident caused by a bus bearing Registration
No.TN-33-N-1398 owned by the second respondent/Transport
Corporation.

(ii)The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P. No.17 of 2008, seeking a compensation of Rs.20,75,000/-, which was restricted to Rs.20,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 31.01.2011 in M.C.O.P. No.17 of 2008, directed the second respondent/ Transport Corporation to pay the Appellant a sum of Rs.5,64,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded cost.

3.Aggrrieved by the Award dated 31.01.2011, passed by the Motor Accident Claims Tribunal in M.C.O.P. No.17 of 2008, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4.Heard, Mr.S.Kaithamalai Kumaran, learned Counsel for the Appellant and Mr.K.J.Sivakumar, learned counsel for the second respondent.

5.According to the learned Counsel for the Appellant, the Appellant as a result of the accident sustained grievous injuries and both her legs were amputated. According to him, the Appellant was aged 19 years at the time of accident and she has claimed a compensation of Rs.20,75,000/- before the Tribunal, but the Tribunal has awarded only a sum of Rs.5,64,000/- under the impugned Award.

6.According to the learned Counsel for the Appellant, the Appellant was a tailor at the time of the accident and in her claim petition she has claimed Rs.6,000/- as her monthly income, whereas the Tribunal without any basis has assessed the monthly income of the Appellant at Rs.3,000/- only.

7.The learned Counsel for the Appellant, further, contended that the Tribunal ought not to have deducted 1/3rd towards personal expenses of the Appellant since it is an injury claim.

8.The learned Counsel for the Appellant, further, contended that the multiplier adopted by the Tribunal for assessing the loss of earning capacity is incorrect. According to him, the correct multiplier to be applied for a person aged 19 years at the time of accident is 18 multiplier, whereas the Tribunal has adopted 16 multiplier.

9.The learned Counsel for the Appellant, would further contend that considering the nature of injuries sustained by the Appellant, the compensation awarded to the Appellant towards future medical expenses is also low. Further, he would contend that the Tribunal has erroneously not awarded any compensation towards attender charges and loss of amenities.

10.Per contra, learned Counsel for the second

respondent/Transport Corporation would contend that the compensation awarded by the Tribunal is a just compensation. He further contended that there is no necessity for this Court to interfere with the impugned Award.

11.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 nature of injuries sustained by the Appellant as a result of an accident caused by a bus, owned by the second respondent/ Transport Corporation has not been disputed by the second respondent before the Tribunal. It is also an undisputed fact that the Appellant has lost both her legs as a result of the accident.

(b)The age of the Appellant and her avocation has not been disproved by the second respondent by letting in any contra evidence before the Tribunal. Considering the age of the Appellant, who was 19 years at the time of the accident, the correct multiplier to be applied as per the judgment of the Hon'ble Supreme Court in the case of Sarla Verma (Smt) And Others vs. Delhi Transport Corporation and Another reported in (2009) 6 SCC 121 is 18 and not 16 as applied by the Tribunal.

(c)As seen from the injuries sustained by the Appellant, she has become a disabled person as a result of loss of both her legs and therefore, she has to be adequately compensated. The Tribunal has erroneously not awarded any compensation to the appellant towards attender charges and loss of amenities, which she is entitled considering the amputation of both her legs on account of the accident.

12.In the light of the above observations, this Court is of the considered view that the Award passed by the Tribunal in its Award dated 31.01.2011, in M.C.O.P. No.17 of 2008 has to be enhanced in the following manner:

S.No.	Heads	Compensation awarded by the Tribunal	Enhanced amount
1	Loss of Earning Power (Rs.3,000x12x18)	Rs.3,84,000/-	Rs.6,48,000/-
2	Pain & Suffering	Rs.60,000/-	Rs.60,000/-
3	Loss of Marital Prospects	Rs.60,000/-	Rs.60,000/-
4	Future Medical Expenses	Rs.40,000/-	Rs.50,000/-
5	Transport Expenses	Rs.10,000/-	Rs.10,000/-
6	Extra nourishment	Rs.10,000/-	Rs.10,000/-
7	Attender Charges	Nil	Rs.26,000/-
8	Loss of Amenities	Nil	Rs.50,000/-

S.No.	Heads	Compensation awarded by the Tribunal	Enhanced amount
	Total	Rs.5,64,000/-	Rs.9,14,000/-

13.In the result, the appeal is partly allowed by enhancing the impugned Award passed by the Tribunal in its Award dated 31.01.2011 in M.C.O.P. No.17 of 2008, by enhancing the Award from Rs.5,64,000/- to Rs.9,14,000/-. The second respondent is directed to deposit Rs.9,14,000/- together with interest at 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of MCOP No.17 of 2008, on the file of the Motor Accident Claims Tribunal (Addl. District Judge-cum-Fast Track Court No.V), Coimbatore @ Tirupur, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum together with accrued interest by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Addl. District Judge-cum-Fast Track Court No.V),
Coimbatore @ Tirupur.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.61915

सत्यमेव जयते

C.M.A.No.2832 of 2011

GJ(CO)
GSP(25/10/2018)

WEB COPY