

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2081 of 2018

Rani @ Chinnakodamma

... Appellant

Vs

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 29.6.2017 passed in M.C.O.P.No.4994 of 2013 by the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Ms.S.K.Subathra

For Respondent : Mr.S.V.Vasanthakumar

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.1,50,600/- awarded by the Tribunal in M.C.O.P.No.4994 of 2013, dated 29.6.2017, the appellant has filed the present Civil Miscellaneous Appeal.

2. The facts in a nutshell are as under: On 7.5.2013 at about 9.00 hours, the appellant was travelling as passenger in the respondent bus bearing registration No.TN-01 N 4662 and when the bus was proceeding at Nair Bridge Junction, EVR Road, the driver of the bus drove the same in a rash and negligent manner endangering to public safety went at a dangerous speed and suddenly turned to the right side and the appellant fell down from the bus and sustained grievous injuries. After the accident, the appellant was admitted in Government Kilpauk Hospital, Chennai. Regarding the accident, a criminal case in Crime No.317/T3/2013 was registered by the Traffic Investigation, Eastern Range, D6 Anna Square Police Station. At the time of accident, the appellant was aged 45 years and was earning Rs.6,000/- per month. Stating that the accident occurred due to the rash and negligent driving of the respondent

bus, the appellant has filed the claim petition claiming compensation of Rs.6,00,000/-.

3. Denying the manner of accident, the respondent has filed counter stating that on 7.5.2013 at about 9.55 hours the bus was running along Egmore Nair Bridge and when the bus reached at Nair Bridge junction, the driver was on the way to turn from Poonamallee Highways towards the right side of Nair Bridge turning. At that time, he saw through the centre mirror that a female passenger was standing near the rear foot board intending to alight from the bus in an urgent manner. On seeing this, the driver and conductor advised her to occupy the seat. Despite, she proceeded the journey at the same place. The driver of the bus applied break and reduced the speed and turned the bus towards Nair Bridge. Taking advantage of the slow movement of the bus, the female passenger jumped out from the running bus and fell down and sustained injuries. It is stated that the accident occurred only on the negligent act of the fell down passenger and the driver of the bus was not responsible for the accident. Hence, the respondent is not liable to pay the compensation and prayed for dismissal of the same.

4. Before the Tribunal, the petitioner examined herself as P.W.1 and Dr.J.R.R.Thiagarajan was examined as P.W.2 and Exs.P1 to P7 were marked. On the side of the respondent, the conductor of the respondent bus was examined as R.W.1. No document was marked on the side of the respondent.

5. The Tribunal held that the accident was due to rash and negligent driving of the driver of the respondent bus and the respondent being the owner of the bus is liable to pay compensation to the appellant. The Tribunal awarded total compensation of Rs.1,50,600/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Being dissatisfied, the appellant has filed the present appeal.

6. Challenging the quantum, the learned counsel for the appellant submitted that the Tribunal has failed to consider the injuries sustained by the appellant. Since the appellant sustained grievous injuries and fracture in the accident, the Tribunal ought to have award more amount. The amounts awarded under various heads are very lesser and the same has to be enhanced. He would submit that though the Doctor assessed the disability at 35%, the Tribunal erred in fixing the disability at 25% and awarded Rs.75,000/- towards disability. Thus, the learned counsel prayed for enhancement of compensation to the tune of Rs.2,00,000/-.

7. Per contra, the learned counsel for the respondent submitted that upon appreciation of oral and documentary evidence, the Tribunal awarded total compensation of Rs.1,50,600/- and the said amount is reasonable amount. There is no ground to enhance the compensation.

8. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant and secondly, none of those findings are under challenge. Only the quantum of compensation is under challenge by the appellant.

9. The case of the appellant is that in the accident, she sustained fracture of proximal humerus left; hip fracture; fracture of shoulder and multiple injuries all over the body. The appellant had taken treatment as inpatient from 7.5.2013 to 7.6.2013 as inpatient and thereafter, she is taking treatment as outpatient. Further case of the petitioner is that at the time of accident, she was aged 45 years and was earning Rs.6,000/- per month by doing sweeping work.

10. Ex.P2 is the discharge summary issued by the Government Kilpauk Medical College Hospital, Chennai, where from it is seen that the appellant was admitted on 7.5.2013 and discharged on 7.6.2013 for fracture of left proximal humerus. It was also seen that on 23.5.2013 a surgery was done. The appellant had also produced Ex.P3 OP chits to show that she had taken treatment as outpatient on various dates.

11. P.W.2-Doctor, after examining the appellant, assessed the disability at 35% and issued Ex.P7 disability certificate. While assessing the disability, P.W.2 opined as under:

"Fracture of left humerus U/and Plate screw fixed. Malunited fracture of left Humerus U/and Plate screw in Situ. Abduction only 60* Left Arm possible. IRER 50* restricted. Difficulty to work as a Sweeper."

12. The Tribunal while calculating the compensation under the head disability has taken the disability at 25% and awarded Rs.75,000/-. Since the appellant sustained fracture of left humerus and plate screw fixed by way of surgery and also P.W.2-Doctor assessed the disability at 35%, the Tribunal ought to have taken the actual disability assessed by P.W.2 at 35% and award compensation under the head disability. Considering the nature of injuries sustained by the appellant, period of treatment undergone by her and also taking note of the fact that

P.W.2-Doctor assessed the disability at 35%, this Court feels that it would be appropriate to take 35% disability. Thus, Rs.75,000/- awarded by the Tribunal under the head disability is enhanced to Rs.1,05,000/- at the rate of Rs.3,000/- per percentage.

13. The Tribunal awarded a sum of Rs.18,200/- towards loss of income during the period of treatment and recuperation by taking the monthly income at Rs.200/- per day for 91 days. Considering the nature of injuries sustained by the appellant, this Court finds that the earning capacity of the appellant would have been affected for nearly six months. Therefore, it would be appropriate to award a sum of Rs.36,000/- towards loss of income by taking the notional monthly income at Rs.6,000/-.

14. The Tribunal awarded Rs.7,750/- towards attender charges by taking Rs.250/- per day for 31 days. Considering nature of injuries and the period of treatment undergone by the appellant and also taking note of fact that during the period of treatment, the appellant had undergone surgery, Rs.7,750/- awarded by the Tribunal for attender charges is enhanced to Rs.30,000/-.

15. As far as medical expenses is concerned, the appellant has produced Ex.P4 medical bills and taking note of Ex.P4, the Tribunal awarded Rs.3,640/- towards medical expenses and the same is maintained.

16. The Tribunal awarded Rs.5,000/- for transport charges and Rs.10,000/- towards extra-nourishment. Considering the nature of injuries sustained by the appellant and also the period of treatment undergone by her, Rs.5,000/- awarded by the Tribunal for transport charges is enhanced to Rs.15,000/-. Further, Rs.10,000/- awarded by the Tribunal for extra-nourishment is enhanced to Rs.15,000/-.

17. The Tribunal has awarded Rs.25,000/- towards pain and suffering. Considering the nature of injuries sustained by the appellant in the accident, she would have suffered pain and suffering during the period of treatment. Further, she would suffered mental and physical shock at the time of accident. The pains and sufferings are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. However, considering the nature of injuries sustained, it would be appropriate to award considerable amount under the head pain and suffering. Therefore, this Court feels that Rs.25,000/- awarded by the Tribunal is very low and the same is enhanced to Rs.90,000/-.

18. The Tribunal has not awarded any amount for loss of amenities. Considering the nature of injuries sustained by the appellant and the period of treatment undergone by her and also the age of the appellant, it would be appropriate to award a sum of Rs.50,000/- towards loss of amenities. Accordingly, Rs.50,000/- is awarded for loss of amenities.

19. The Tribunal awarded Rs.1,000/- for damages to clothes and Rs.5,000/- for mental agony and the same are maintained. Thus, the total compensation of Rs.1,50,600/- awarded by the Tribunal is enhanced to Rs.3,50,640/-, rounded off to Rs.3,50,600/- as under:

Heads	Rs.
Disability	1,05,000.00
Loss of income	36,000.00
Pain and suffering	90,000.00
Transport charges	15,000.00
Extra-nourishment	15,000.00
Damages to clothes	1,000.00
Attender charges	30,000.00
Medical expenses	3,640.00
Mental agony	5,000.00
Loss of amenities	50,000.00
Total	3,50,640.00

20. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The compensation of Rs.1,50,600/- awarded by the Tribunal is enhanced to Rs.3,50,600/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit excluding the period of dismissal for default i.e., 26.2.2015 to 21.3.2016. The respondent is directed to deposit the enhanced compensation with interest to the credit of the Bank account of the Tribunal directly by NEFT or RTGS mode within a period of twelve weeks from the date of receipt of a copy of this judgment and intimate the said deposit details to the Tribunal with a copy of the said Bank Advise. On such deposit, the appellant is permitted to withdraw the amount with accrued interest.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
III Courts of Small Causes,
Chennai.

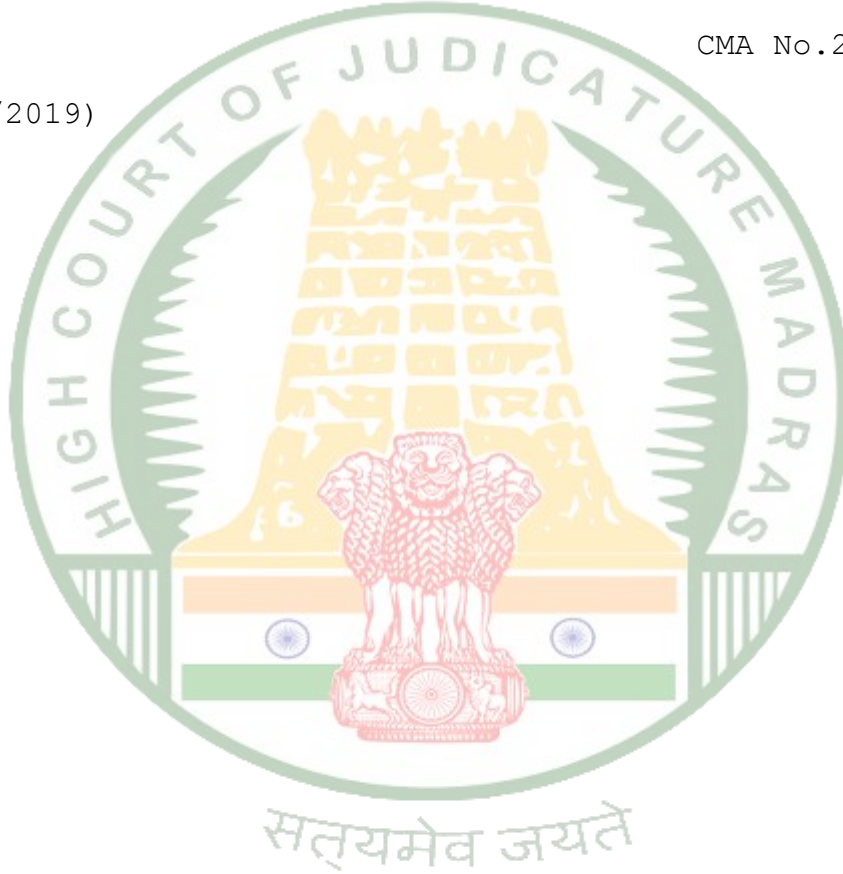
copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.S.K.Subathra, Advocate, S.R.No.64007

+1 cc to Mr.S.V.Vasanthakumar, Advocate, S.R.No.64041

CMA No.2081 of 2018

(CO)
SSM(23/05/2019)



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