

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 20.11.2018
CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.2480 and 2481 of 2018
and
C.M.P.No.18930 of 2018

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram)Ltd.,
Kanchipuram-631 502. ... Appellant in C.M.A.No.2480 of
2018

2. Govindammal ... Appellant in C.M.A.No.2481 of 2018
Vs

1.Govindammal .. Respondent in C.M.A.No.2480 of 2018

2. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram)Ltd.,
Kanchipuram-631 502.
.. Respondent in C.M.A.No.2481 of 2018

Prayer : Civil Miscellaneous Appeals have been filed
under Section 173 of the Motor Vehicles Act, 1988 against
the judgment and decree dated 13.04.2017 made in
M.C.O.P.No.1783 of 2015 on the file of the Motor Accident
Claims Tribunal(V Small Causes Court), Chennai.

In CMA.No.2480 of 2018:

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr. Richard Suresh Kumar

In CMA.No.2481 of 2018:

For Appellant : Mr.Richard Suresh Kumar

For Respondent : Mr.K.J.Sivakumar

COMMON JUDGMENT

[Judgment of the Court was delivered by
N.SESHASAYEE, J.]

Govindammal, aged 43 years, a tailor by avocation met with an accident on 02.02.2015 at around 8.30 p.m., when a bus bearing Registration No.TN-21-N-1341, belonging to the State Transport Corporation, the appellant (in CMA.No.2480 of 2018) dashed against the motor cycle in which Govindammal was travelling as a pillion rider, due to which, she suffered injuries, chief among them are a crush injury of her right lower limb which required amputation. She had also suffered a fracture of her right hand which was surgically fixed. Initially, she was admitted in the hospital as in-patient from 02.02.2015 to 16.3.2105 and subsequently, on two occasions, i.e., from 18.06.2015 to 06.07.2015 and thereafter, from 05.10.2015 to 27.10.2015, for the injuries suffered. P.W.2, Doctor, who though not had treated the victim of the accident, had evaluated the extent of her disability and reckoned it at 80%. With these facts, the claimant moved the Tribunal seeking compensation against the Transport Corporation, claiming compensation of Rs.25,00,000/-

2. The primary head of compensation is loss of earning power, medical expenses and disability. In quantifying her loss of earning power, the Tribunal reckoned the total permanent disability at 80% and fixed the monthly income at Rs.8,000/-. Here, the Tribunal has quantified her loss of earning power as Rs.3,00,000/- though did not arrive at the said sum, the compensation awarded by the tribunal is tabulated below:

Heads of Compensation	Amount (Rs.)
Transportation & Nourishing Food	50,000.00
Attender Charges	21,500.00
Medical Bills	1,862.25
Disability	2,40,000.00
Loss of earning	96,000.00
Loss of earning power	3,00,000.00
Damages for pain, suffering & trauma	4,00,000.00
Loss of amenities, expectation of life and mental agony	4,00,000.00
Total :	15,09,400.00

This, the Tribunal has directed the appellant-Transport Corporation to pay with interest at 7.5% p.a. Aggrieved by the award, the Transport Corporation had preferred C.M.A.No.2480 of 2018, however the claimant being dissatisfied with the quantum of award amount, has preferred C.M.A.No.2481 of 2018, seeking enhancement of compensation.

3.The learned counsel for the appellant-Transport Corporation argued that the Tribunal had awarded Rs.4,00,000/- for pain, sufferings and trauma and another Rs.4,00,000/- for mental agony and loss of amenities. This is untenable, as there are no reasons given as to how this amount has been arrived, argued the counsel. He also submitted that these heads of damages are more in the nature of conventional damages and therefore, they have to be justly valued.

4. Per contra, the learned counsel for the claimant/respondent (in CMA.No.2481 of 2018) would argue that for the loss of earning power, the Tribunal has determined the compensation nominally without resorting to any known method and awarded a lumpsum of Rs.3,00,000/-. This, the Court may have to revisit it.

5. This Court finds merit in the submission of both the appellant as well as the respondent.

6. The award of the Tribunal is silent as to the methodology adopted by it in quantifying the compensation on the head of loss of earning power. Admittedly, the claimant had lost one of her limb and given the fact, she has also suffered 80% disability the Tribunal ought to have facted in these facts and should have quantified the compensation appropriately. The Tribunal has reckoned the monthly income at Rs.8,000/- and at the relevant time of accident, the claimant aged 43 years, another 30% must be added, which would make the income component for quantifying the compensation at Rs.10,400/- per month. Applying a multiplier of 14, the total compensation payable on this head would be $[10,400 \times 12 \times 14 \times 80\%] = \text{Rs.}13,97,760/-$. This is rounded off to Rs.13,98,000/-. On the head of disability, compensation is seen to have been valued at Rs.3,000/- per percentage of injury, which appears reasonable. On the head of pain, suffering and trauma, compensation is reduced to Rs.2,00,000/-. Since the victim has lost her leg, she may require continuous medical support as well as artificial limb to sustain her mobility, Rs.1,00,000/- is granted. For loss of amenities and expectation of life and mental agony, compensation is reduced to Rs.2,00,000/-. On other heads, the compensation as paid by the Tribunal is confirmed. The revised total compensation amount now determined by this

Court is Rs.23,07,400/- and the break-up details reads as below :

Heads of Compensation	Revised award amount (Rs.)
Transportation & Nourishing Food	50,000.00
Attender Charges	21,500.00
Medical Bills	1,862.25
Disability	2,40,000.00
Loss of earning	96,000.00
Loss of earning power	13,98,000.00
Damages for pain, suffering & trauma	2,00,000.00
Loss of amenities, expectation of life and mental agony	2,00,000.00
Towards medical support for fixing artificial limb	1,00,000.00
Total :	23,07,362.25 (rounded off to : Rs.23,07,400/-)

7. In the result, C.M.A.No.2480 of 2018 is dismissed and C.M.A.No.2481 of 2018 is partly allowed. The compensation awarded by the Tribunal in MCOP No.1783 of 2015 on the file of MACT, (V Small Causes Court, Chennai) is enhanced from Rs.15,09,400/- to Rs.23,07,400/- and the State Transport Corporation is directed to pay the enhanced compensation amount to the claimant along with the accrued interest at the rate of 7.5% p.a. as determined by the Tribunal, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order, and the claimant is permitted to withdraw the same forthwith. The claimant is also directed to pay the necessary Court fee for the enhanced compensation amount, if any. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

ssn

To:

1.The V Judge
Court of Small Causes,
Motor Accidents Claims Tribunal
Chennai -104.

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

+1cc to Mr.Richard Suresh Kumar , Advocate SR.No. 79242

+1cc to Mr.K.J.Sivakumar, Advocate SR.No. 79090

C.M.A.Nos.2480 and 2481 of 2018

A.SK(09/04/2019)



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