

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2585, 2587 to 2590 of 2018

S.Divya	..Claimant/ Appellant in C.M.A.No.2585/2018
M.Radha	..Claimant/ Appellant in C.M.A.No.2587/2018
M.Vanitha	..Claimant/ Appellant in C.M.A.No.2588/2018
S.Rajeswari	..Claimant/ Appellant in C.M.A.No.2589/2018
S.Radha	..Claimant/ Appellant in C.M.A.No.2590/2018

Vs.

The Managing Director,
Tamilnadu State Transport Corporation
(Villupuram Division) Ltd.,

..Respondent/ Respondent in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the common order and decree dated 16.02.2017 made in M.C.O.P.Nos.7773, 7775, 7772, 7771 and 7776 of 2015 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
(in all C.M.As.)

For Respondent : Mr.K.J.Sivakumar
(in all CMA's)

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

These Civil Miscellaneous Appeals have been filed against the against the common order and decree dated 16.02.2017 made in M.C.O.P.Nos.7773, 7775, 7772, 7771 and 7776 of 2015 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.By consent, all these appeals are taken up for final disposal at the admission stage itself. Since all the appeals are arising out of the same accident, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the

respective claim petitions.

4.The appellants are the claimants in M.C.O.P.Nos.7773, 7775, 7772, 7771 and 7776 of 2015 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petitions, claiming compensation of a sum of Rs.10,00,000/- each for the injuries sustained by them in the road accident that took place on 25.07.2015.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and dismissed the claim petition, M.C.O.P.No.7772 of 2015 on the ground that the appellant in C.M.A.No.2588 of 2018 has not proved her claim. In other claim petitions, the Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.1,46,600/-, Rs.1,22,200/-, Rs.1,22,400/- and Rs.1,22,200/- respectively as compensation.

6.Not being satisfied with the compensation awarded by the Tribunal, the appellants/claimants have come out with the present appeals.

7.The learned counsel appearing for the appellants contended that C.M.A.No.2588 of 2018 is filed by the claimant, challenging the award dismissing the claim petition, M.C.O.P.No.7772 of 2015. According to the learned counsel for the appellants, the Tribunal erred in dismissing the claim petition, M.C.O.P.No.7772 of 2015, on the ground that the name of the claimant was not found in the First Information Report and Charge Sheet. The Tribunal failed to consider Exs.P8 to P12 and P44, produced by the appellant in M.C.O.P.No.7772 of 2015 to substantiate her claim.

7(a).In respect of appellant in other claim petitions, the learned counsel for the appellants contended that the appellants have examined one Dr.K.J.Mathiazhagan as P.W.7 to prove the nature of injuries sustained by them and the percentage of disability suffered by them. They have produced certificate of disability. The Tribunal on erroneous grounds, reduced the percentage of disability to 30%, 25%, 25% and 25% respectively and awarded lesser compensation. The amounts awarded under different heads are meager and prayed for enhancement of compensation and for setting aside the award in M.C.O.P.No.7772 of 2015.

8.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the appellant in C.M.A.No.2588 of 2018 failed to prove that she travelled in the

van at the time of accident and sustained injuries. The documents produced by her do not relate to the date of accident. In respect of appellant in other claim petitions are concerned, P.W.7- Doctor has exaggerated the percentage of disability and has not produced any materials to substantiate the percentage of disability mentioned in the certificate. The Tribunal under such circumstances, reduced the percentage of disability and awarded compensation. There is no error in the said finding. The amounts awarded under different heads are not meager and they are excessive and prayed for dismissal of all the appeals.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. M.C.O.P.No.7772 of 2015 filed by the appellant in C.M.A.No.2588 of 2018 was dismissed by the Tribunal. The contention of the learned counsel for the appellants that the Tribunal did not consider Exs.P8 to P12 and P44 is not correct. The Tribunal has considered the date of said documents and nature of the documents and held that those documents do not support the case of the appellant in C.M.A.No.2588 of 2018. The appellant in the said Civil Miscellaneous Petition has not produced any document and has not produced any certificate to prove the injuries sustained by her in the accident in question. In addition to that, her name was not mentioned in the First Information Report and Charge Sheet. The Tribunal considering all the materials on record in proper perspective, dismissed the claim petition, holding that the appellant failed to prove that she traveled in the van at the time of accident and she sustained injuries in the said accident. There is no perversity in the finding of the Tribunal in the said claim petition. Hence, C.M.A.No.2588 of 2018 is dismissed.

11. As far as C.M.A.Nos.2585, 2587, 2589 and 2590 of 2018 are concerned, it is seen from the records, that P.W.7-Doctor has certified the percentage of disability with regard to the disability suffered by the appellants and nature of injuries. The Tribunal has reduced the same from 55%, 45%, 45% and 45% to 30%, 25%, 25% and 25%, respectively on the ground that the Doctor has not given any worksheet and guidelines, based on which he has assessed the percentage of disability. The said reasoning for reducing the disability is not correct. The appellants are entitled to compensation for the disability as per the disability certificate produced by them. Thus, the amounts granted towards permanent disability is modified as:

M.C.O.Ps	Amount awarded for disability
M.C.O.P.No.7773 of 2015	55% x Rs.3,000/- = Rs.1,65,000/-

M.C.O.Ps	Amount awarded for disability
M.C.O.P.No.7775 of 2015	45% x Rs.3,000/- = Rs.1,35,000/-
M.C.O.P.No.7771 of 2015	45% x Rs.3,000/- = Rs.1,35,000/-
M.C.O.P.No.7776 of 2015	45% x Rs.3,000/- = Rs.1,35,000/-

12.The appellants have taken treatment as in-patient for only 4, 1, 2 and 1 days respectively. The Tribunal considering the nature of injuries, period of treatment and evidences of appellants and documents, has awarded compensation under different heads. This Court has considered the entire materials on record and is of the considered view that the compensation awarded by the Tribunal under different heads are just compensation and there is no reason to interfere with the same. Hence, the compensation awarded by the Tribunal is modified as follows:

(i)C.M.A.No.2585 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	90,000/-	1,65,000/-	enhanced
2.	Pain and suffering	30,000/-	30,000/-	confirmed
3.	Extra nourishment	3,000/-	3,000/-	confirmed
4.	Transport to Hospital	3,000/-	3,000/-	confirmed
5.	Damages to clothes	500/-	500/-	confirmed
6.	Attender charges	800/-	800/-	confirmed
7.	Medical expenses	6,000/-	6,000/-	confirmed
8.	Future Medical expenses	3,000/-	3,000/-	confirmed
9.	Loss of income	7,251/-	7,251/-	confirmed
10.	Loss of amenities	3,000/-	3,000/-	confirmed

	Total	1,46,551/- - Rounded off to 1,46,600/-	2,21,551/- Rounded off to 2,21,600	Enhanced by Rs.75,000/-
--	-------	---	---------------------------------------	----------------------------

(ii) C.M.A.No.2587 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,000/-	1,35,000/-	enhanced
2.	Pain and suffering	25,000/-	25,000/-	confirmed
3.	Extra nourishment	2,500/- -	2,500/- -	confirmed
4.	Transport to Hospital	2,500/- -	2,500/- -	confirmed
5.	Damages to clothes	500/-	500/-	confirmed
6.	Attender charges	200/-	200/-	confirmed
7.	Medical expenses	5,000/- -	5,000/- -	confirmed
8.	Future Medical expenses	2,500/- -	2,500/- -	confirmed
9.	Loss of income	6,500/- -	6,500/- -	confirmed
10.	Loss of amenities	2,500/- -	2,500/- -	confirmed
	Total	1,22,200/-	1,82,200/-	Enhanced by Rs.60,000/-

(iii) C.M.A.No.2589 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,000/-	1,35,000/-	enhanced

2.	Pain and suffering	25,000/-	25,000/-	confirmed
3.	Extra nourishment	2,500/-	2,500/-	confirmed
4.	Transport to Hospital	2,500/-	2,500/-	confirmed
5.	Damages to clothes	500/-	500/-	confirmed
6.	Attender charges	400/-	400/-	confirmed
7.	Medical expenses	5,000/-	5,000/-	confirmed
8.	Future Medical expenses	2,500/-	2,500/-	confirmed
9.	Loss of income	6,500/-	6,500/-	confirmed
10.	Loss of amenities	2,500/-	2,500/-	confirmed
	Total	1,22,400/-	1,82,400/-	Enhanced by Rs.60,000/-

(iv) C.M.A.No.2590 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,000/-	1,35,000/-	enhanced
2.	Pain and suffering	25,000/-	25,000/-	confirmed
3.	Extra nourishment	2,500/-	2,500/-	confirmed
4.	Transport to Hospital	2,500/-	2,500/-	confirmed
5.	Damages to clothes	500/-	500/-	confirmed
6.	Attender charges	200/-	200/-	confirmed
7.	Medical expenses	5,000/-	5,000/-	confirmed

8.	Future Medical expenses	2,500/-	2,500/-	confirmed
9.	Loss of income	6,500/-	6,500/-	confirmed
10.	Loss of amenities	2,500/-	2,500/-	confirmed
	Total	1,22,200/-	1,82,200/-	Enhanced by Rs.60,000/-

13.The respondent-Transport Corporation is directed to deposit the enhanced compensation of Rs.2,21,600/-, Rs.1,82,200/-, Rs.1,82,400/- and Rs.1,82,200/- along with accrued interest and costs to the credit of M.C.O.P.Nos.7773, 7775, 7771 and 7776 of 2015 respectively, on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of copy of this judgment. On such deposit, the claimants/appellants in C.M.A.Nos.2585, 2587, 2589 and 2590 of 2018 are permitted to withdraw the entire award amount respectively, with accrued interest and costs, after adjusting the amounts already withdrawn, if any, by making necessary applications before the Tribunal.

14.In the result, C.M.A.No.2588 of 2018 is dismissed and C.M.A.Nos.2585, 2587, 2589 and 2590 of 2018 are partly allowed, enhancing the compensation awarded by the Tribunal to Rs.2,21,600/-, Rs.1,82,200/-, Rs.1,82,400/- and Rs.1,82,200/- respectively. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

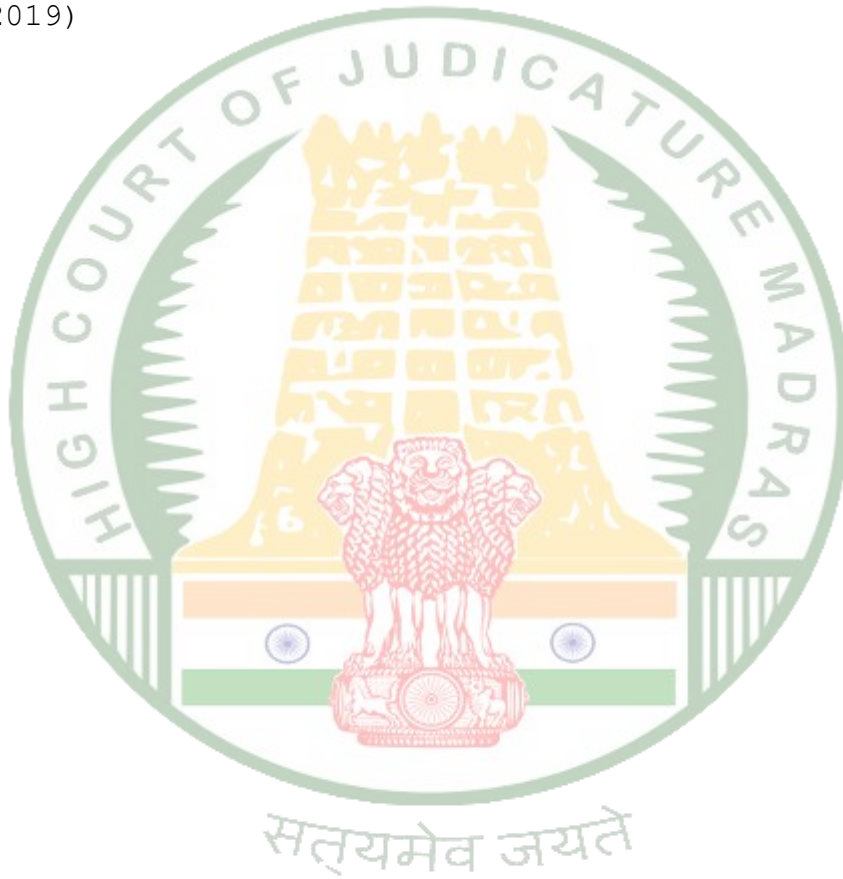
WEB COPY

2.The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.K.J.Siva Kumar, Advocate, S.R.No. 79280
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No. 79278

CMA.Nos.2585, 2587 to 2590 of 2018

SJ(CO)
GN(06/02/2019)



WEB COPY