

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2299 of 2018

Susila

.. Appellant/Claimant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Dharmapuri

.. Respondent/Defendant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 22.10.2016, made in MCOP.No.102 of 2014, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai.

For Appellant : Ms.M.Malar

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 22.10.2016, made in MCOP.No.102 of 2014, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai.

2.By consent, the appeal itself is taken up for final disposal at the admission stage.

3.The appellant is the claimant. She has filed M.C.O.P.No.102 of 2014, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 09.12.2012.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and awarded a sum of Rs.80,000/- as compensation under different heads, directing the

respondent-Transport Corporation to pay the same.

5. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with this appeal seeking enhancement of the same.

6. Though the appellant has raised a ground that the Doctor has assessed 85% of disability, but the Tribunal erred in fixing 30% disability, when the appeal is taken up for hearing, the learned counsel for the appellant submitted that by mistake, the said ground was raised. The learned counsel appearing for the appellant further contended that the Tribunal ought to have awarded compensation by applying multiplier method. The amounts awarded under different heads are very meager. The Tribunal failed to see that the appellant has taken treatment in three hospitals. The Tribunal has not awarded any amount towards loss of income during treatment period and loss of earning capacity and prayed for enhancement of the same.

7. Per contra, Mr. D. Venkatachalam, learned counsel taking notice for the respondent-Transport Corporation contended that the Tribunal has considered the evidence of P.W.2, Doctor in proper perspective and has awarded compensation. The appellant has not proved the loss of income and loss of earning capacity. The amounts awarded is not meager and there is no reason warranting interference by this Court to enhance the same and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

9. From the materials on record, it is seen that the Tribunal, considering the evidence of P.W.2, Doctor, fixed the disability at 30% and there is no error warranting modification of the same. The appellant has not proved that she is totally disabled and there is functional disability. Hence, the contention of the learned counsel for the appellant that the Tribunal ought to have applied multiplier method is without merits. The Tribunal has awarded a sum of Rs.1000/- per percentage and it is meager. Thus, the amount awarded under the head of disability is enhanced to Rs.90,000/- by awarding Rs.3,000/- per percentage of disability i.e., (Rs.3000 x 30%).

10. Considering the contention of the learned counsel for the appellant that the appellant was a construction labour, notional income of the appellant is fixed at Rs.6,000/- per month and a sum of Rs.6,000/- is awarded towards loss of income for one month, i.e., during the treatment period. The amount of

Rs.15,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.20,000/-; a sum of Rs.5,000/- granted towards attender charges is enhanced to Rs.10,000/- and extra nourishment is enhanced to Rs.10,000/-. In all other aspects, the amount granted by the Tribunal is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	25,000/-	25,000/-	confirmed
2.	Extra nourishment	5,000/-	10,000/-	enhanced
3.	Attender charges	5,000/-	10,000/-	enhanced
4.	Pain and Suffering	15,000/-	20,000/-	enhanced
5.	Disability	30,000/-	90,000/-	enhanced
6.	Loss of income	-	6,000/-	granted
	Total	80,000/-	1,61,000/-	Enhanced by Rs.81,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed, enhancing the compensation awarded by the Tribunal from Rs.80,000/- to Rs.1,61,000/-. The respondent-Transport Corporation is directed to deposit the enhanced compensation of Rs.1,61,000/-, along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.102 of 2014, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai, within a period of twelve weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount with interest from the date of petition till the date of realization and proportionate costs, by making necessary application before the Tribunal. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

gsa

To

The Additional Subordinate Judge,
(Motor Accidents Claims Tribunal),
Tiruvannamalai.

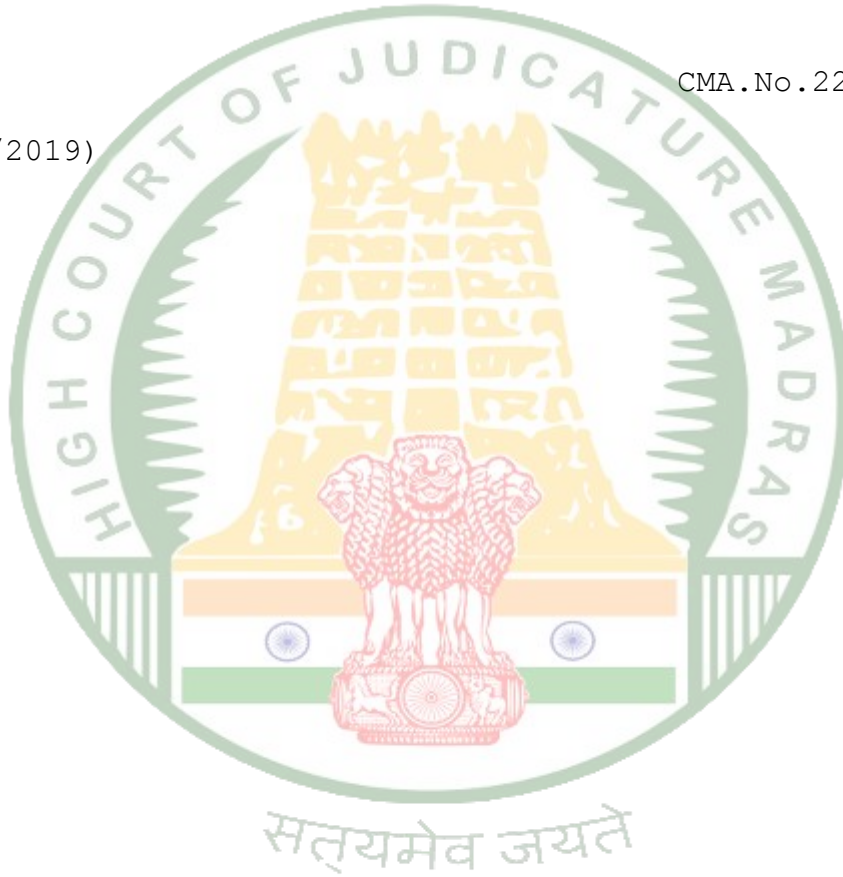
Copy To: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.77186

+1cc to Mr.M.Malar, Advocate SR.No.77201

SSI (CO)
GMY (21/01/2019)

CMA.No.2299 of 2018



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