

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.04.2019

PRONOUNCED ON: 29.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1857 and 1860 of 2012

R.Parthiban
P.Saraswathy

...Appellant in C.M.A.No.1857 of 2012
...Appellant in C.M.A.No. 1860 of 2012

vs.

Tamilnadu State Transport Corporation Limited,
Villupuram Division,
Pallavan Salai, Chennai. ... Respondent in both C.M.A's

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 14.09.2011 made in M.C.O.P.Nos.1936 and 1937 of 2007, on the file of Motor Accidents Claims Tribunal, VI Judge, Small Causes Court, Chennai.

(In Both C.M.A's)

For Appellant : Mr.A.Shanmugaraj

For Respondent : Mr.G.Palani

COMMON JUDGMENT

Both the Civil Miscellaneous Petitions are filed by the respective claimants seeking enhancement of compensation awarded in M.C.O.P.Nos.1936 and 1937 of 2007.

2.These claim petitioners/appellant filed the above claim petition seeking compensation for the accidental injury sustained by them on 27.10.2006 while they are traveling as a passenger in the respondent/Government Transport Corporation bus.

3.Before the Tribunal the claim petitioner R.Parthiban was examined as P.W.1 and the other claim petitioner P.Saraswathy was examined as P.W.2. Doctor was examined as P.W.3, who had given disability certificate under Exs.P5 and P7 and marked Ex.P1 to P8. On behalf of the respondent/Government Transport Corporation, bus conductor was examined as R.W.1 and no documents were marked. As both the claim petition has been filed by the respective claim petitioner arising out of same accident, common trial was conducted and common judgment was rendered. Whereby in M.C.O.P.No.1936 of 2007 a sum of Rs.95,500/- was awarded while in M.C.O.P.No.1937 of 2007 a sum

of Rs.74,000/- was awarded. As against the award of the Tribunal dated 14.09.2011 made in M.C.O.P.Nos.1936 and 1937 of 2007 the claim petitioner filed an appeal for enhancement of compensation.

4.The factum of the accident, manner of the accident and negligence on the part of the driver of the respondent's bus are not challenged in these appeals. Hence, the finding rendered by the trial court that while the claim petitioners were traveling as passenger in the respondent/Government Transport Corporation bus, due to the rash and negligent driving by the driver of the respondent herein the accident has taken place resulted in accidental injuries on P.W.1 and P.W.2 are hereby confirmed.

5.On the point of factum of compensation both the parties were heard.

6.The appellant/claimant in C.M.A.No.1857 of 2012 was examined as P.W.1 and Doctor, who had issued disability certificate for him was examined as P.W.3 and marked Ex.P5-disability certificate. On the perusal of Ex.P2 coupled with the oral evidence of P.W.3. It is seen that:

On seeing Ex.P2 OP chit issued by Govt.Hospital, Pernambattu he sustained compression of lateral bruises of C4 & C5 and treated as outpatient on 28.10.2006 X-ray taken for neck shown cervical spine C4 & C5. He was given shiff Cervical Collar and was advised to take the prescribed medicine for further 3 months.

.....

On perusal of Ex.P2 the petitioner sustained only compression of C4 & C5 and cervical collar was given to him. The petitioner has not sustained any fracture. No further treatment records filed after Ex.P2. If the petitioner had taken further treatment, there would be possibility of reduction in disability. Hence he may be one of the reason for aggravating the disability. However considering the nature and gravity of injury the disability caused to the petitioner is 35%. But no supportive evidence to prove the avocation and income of the petitioner. PW.3 doctor deposed that the movement of neck of the petitioner is restricted.

.....

The petitioner sustained only compression of C4 & C5 and treated only conservatively"

No fracture has been noted in the disability certificate and hence on the other hand the disability has arrived by the

Tribunal at the rate of 35% is well considered and well merited and does not warrant any interference.

7.The learned counsel for the appellant/claimant would contend that it is the functional disability. After perusing the evidence of P.W.3-Doctor coupled with Ex.P7-disability certificate this court is of the considered view that the criteria fixed for adoption of multiplier method is arising functional disability as laid down by the Hon'ble Apex Court in ACJ 2011 Volume I Rajkumar vs. Ajay Kumar case are not being satisfied in the factual matrix of this case. This Court has no other go but to reject such a plea raised by the appellant. With regard to the loss of income during the treatment period the amount of Rs.4,500/- granted per month for the period of 3 months (Rs.4,500/- X 3 = Rs.13,500/-). The amount awarded by the Tribunal towards transportation, Extra nourishment, disability and pain and suffering are just and reasonable and hereby confirmed. With regard to medical bills a sum of Rs. 1,000/- granted. With regard to loss of amenities and attender charges a sum of Rs.3,000/- granted respectively. In the absence of any evidence to prove the future medical expenses the trial court has rightly rejected the claim of the claim petitioner and hence the same is hereby confirmed. The amounts 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.	Loss of Income	4,500	13,500	Enhanced
2.	Transportation	3,000	3,000	Confirmed
3.	Extra Nourishment	3,000	3,000	Confirmed
4.	Pain and Suffering	15,000	15,000	Confirmed
5.	Disability	70,000	70,000	Confirmed
6.	Medical Bills	-	1,000	Granted
7.	Loss of Amenities	-	3,000	Granted
8.	Attender Charges	-	3,000	Granted
	Total	Rs.95,500/-	Rs.1,11,500/-	Enhanced by Rs.16,000/-

8. In C.M.A.No.1860 of 2012, the factum of accident and manner of the accident as in the connected civil miscellaneous appeal is hereby admitted that the rash and negligent driving by the driver of the respondent/Government Transport Corporation bus caused accident, as held by the Tribunal is hereby confirmed.

9. The injured claim petitioner was examined as P.W.2. On the perusal of Ex.P3:

"On seeing Ex.P3 OP chit the petitioner sustained dislocation and right knee with medical ligament avulsion and treated as outpatient on 28.10.2006 whereby manipulation and mobilisation was done.

The P.W.3 Dr.J.R.R. Thiagarajan who examined the petitioner/appellant clinically examined and assessed the disability based on medical records and deposed that the petitioner sustained dislocation of right knee and medial ligament avulsion, now the right knee is contracted, flexion of right knee 80 degree and extension last 20 degrees limited, it is difficult for the petitioner to fold her right leg and walk fast, therefore assessed the disability at 30%. his disability certified is marked as Ex.P7.

Thus from perusal of Ex.P3 the petitioner sustained only dislocation of right knee and medial ligament avulsion whereby manipulation and mobilisation was done.

It is also to be noted that the PW.3 doctor deposed that the movement of right leg of the petitioner is restricted."

Thus, based upon the above analysis of the oral and documentary evidence, I find that the claim petitioner who was aged about 32 years sustained injury and due to the injuries she had suffered dislocation on right knee and medial ligament avulsion whereby manipulation and mobilisation was done. Accordingly, the disability suffered by the appellant/claim petitioner is fixed at 25% similar finding rendered by the Tribunal is confirmed. With regard to the loss of income during the treatment period the amount of Rs.3,000/- granted per month for the period of 3 months (Rs.3,000/- X 3 = Rs.9,000/-). The amount awarded by the Tribunal towards transportation, Extra nourishment, disability and pain and suffering are just and reasonable and hereby confirmed. With regard to loss of amenities and attender charges a sum of Rs.3,000/- granted

respectively. In the absence of any evidence to prove the future medical expenses the trial court has rightly rejected the claim of the claim petitioner and hence the same is hereby confirmed. The amounts 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.	Loss of Income	3,000	9,000	Enhanced
2.	Transportation	3,000	3,000	Confirmed
3.	Extra Nourishment	3,000	3,000	Confirmed
4.	Pain and Suffering	15,000	15,000	Confirmed
5.	Disability	50,000	50,000	Confirmed
6.	Loss of Amenities	-	3,000	Granted
7.	Attender Charges	-	3,000	Granted
	Total	74,000	86,000	Enhanced by Rs.12,000/-

9. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.95,500/- in M.C.O.P.No.1936 of 2007 is hereby enhanced to Rs.1,11,500/- and compensation awarded by the Tribunal at Rs.74,000/- in M.C.O.P.No.1937 of 2007 is hereby enhanced to Rs.86,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The respondent/Government Transport Corporation is directed to deposit the enhanced award amount in both the civil miscellaneous appeals along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount on the basis of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

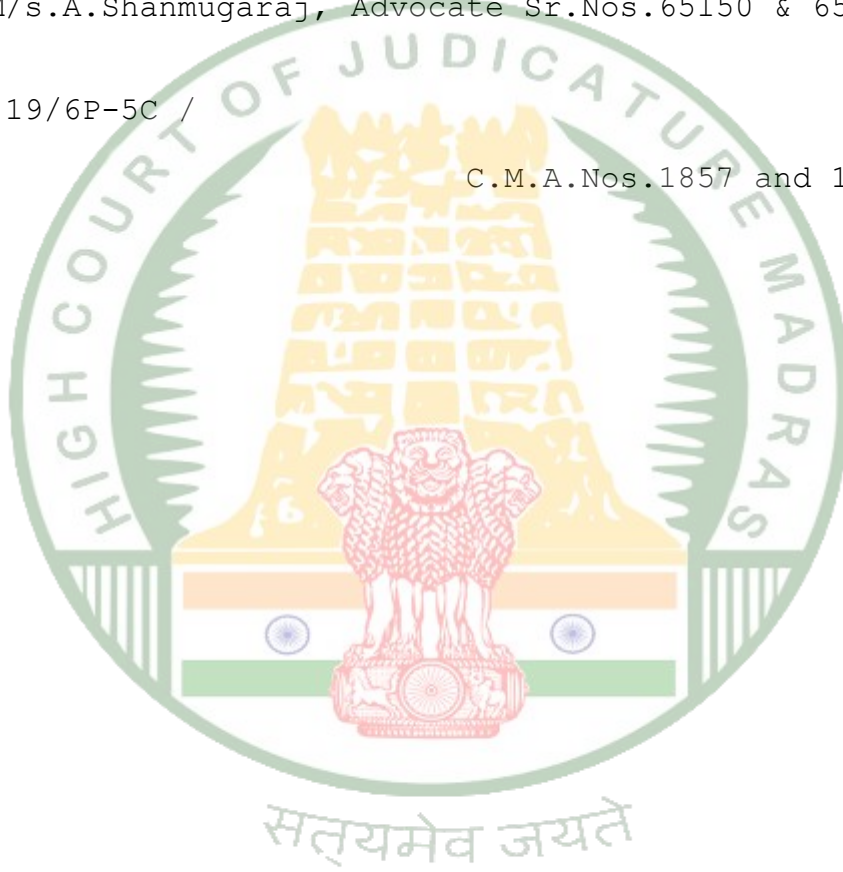
The Motor Accident Claims Tribunal/VI Judge,
Small Causes Court, Chennai.

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

+2 cc to M/s.A.Shanmugaraj, Advocate Sr.Nos.65150 & 65151

AKM/30.09.19/6P-5C /

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