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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2606 of 2015 & 507 of 2016
and C.M.P.No.4301 of 2016

Dhanam

..Appellant/Petitioner
in CMA.No.2606 of 2015

and Respondent/Petitioner
in CMA.No.507 of 2016

Vs.

The Managing Director.
Tamilnadu State Transport Corporation,
(Villupuram Division) Limited,
No.3/137, Vazhuthareddy,
Villupuram Division.

..Respondent/Respondent
in CMA.No.2606 of 2015

and Appellant/Respondent
in CMA.No.507 of 2016

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 03.09.2014 made in M.C.O.P.No.5803 of 2011 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant
in CMA.No.2606 of 2015
and Respondent in
CMA.No.507 of 2016

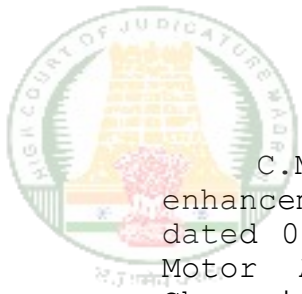
: Mr.F.Terry Chellaraja
for Ms.M.Malar

For Respondent
in CMA.No.2606 of 2015
and Appellant in
CMA.No.507 of 2016

: Mr.K.J.Sivakumar

COMMON JUDGMENT

C.M.A.No.507 of 2016 is filed by the Transport Corporation against the award dated 03.09.2014 made in M.C.O.P.No.5803 of 2011 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.



WEB COPY

C.M.A.No.2606 of 2015 is filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 03.09.2014 made in M.C.O.P.No.5803 of 2011 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The claimant filed the claim petition in M.C.O.P.No.5803 of 2011 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 07.08.2010. 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 directed the respondent/Transport Corporation to pay a sum of Rs.4,54,000/- as compensation to the claimant. Against the said award dated 03.09.2014 made in M.C.O.P.No.5803 of 2011, the respondent/Transport Corporation has come out with C.M.A.No.507 of 2016 challenging the liability fastened on them as well as quantum of compensation. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.2606 of 2015 seeking enhancement of compensation.

5.The learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal ought not to have held that mere registering FIR against the driver of the respondent bus is enough for holding negligence on him. The evidence of PW1/claimant is not corroborated by any other independent witness. The Tribunal failed to consider that no valid document was filed by the claimant to prove her age and income. The permanent disability of the claimant fixed by the Tribunal at 51% is on the higher side. The Tribunal erred in adopting multiplier method to award compensation towards loss of future earning of the claimant and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent driving by the driver of the bus. The claimant as P.W.1 has deposed to that effect and marked F.I.R., which was registered against the driver of the bus. The claimant was an agriculturist-cum-coolie and was earning a sum of Rs.400/- per day. The Tribunal ought to have fixed 100% disability for



awarding compensation towards loss of future earning. The Tribunal fixed the monthly income of the claimant at Rs.6,500/-, which is meagre. PW2/Doctor has certified the disability of the claimant at 70% and the Tribunal without any reason reduced the same to 51%. The amounts awarded by the Tribunal towards transportation, loss of income, pain & suffering, attendant charges and medical expenses are meagre. The Tribunal has not awarded any amount towards future medical expenses and prayed for enhancement of compensation.

7. Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

8. From the materials available on record, it is seen that the claimant as P.W.1 has deposed that the driver of the bus drove the bus in a rash and negligent manner and the claimant fell down from the bus. Ex.P1/FIR has been registered against the driver of the bus. Though the RW1/driver of the bus deposed that he has driven the bus in a careful manner, during his cross examination, he admitted that Motor Vehicle Inspector's report has not been produced. No independent witness was examined by the respondent/Transport Corporation to prove that the driver of the bus was not responsible for the accident. In view of the same, the Tribunal has held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

9. As far as quantum of compensation is concerned, the claimant as PW1 has deposed that she was an agriculturist-cum-coolie and was earning a sum of Rs.400/- per day. In the accident, she has sustained fracture of her both bones of right leg. She has taken treatment in the hospital as in-patient from 08.08.2010 to 12.10.2010 and underwent surgery on 21.08.2010. She has taken continuous treatment as out-patient in the hospital till 07.04.2011 on various dates. PW2/Doctor certified the disability of the claimant at 70%. The Tribunal reduced the same to 51%. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.6,500/- per month as notional income of the claimant, applied multiplier '13', fixed 25% disability as per the judgment of the Hon'ble Apex Court and awarded a sum of Rs.2,53,500/- (Rs.6,500/- x 12 x 13 x 25%) towards loss of earning capacity. In addition to that the Tribunal has awarded a sum of Rs.76,500/- (Rs.1,500/- x 51%) towards disability by awarding Rs.1,500/- per percentage. Further, the Tribunal has awarded a sum of Rs.39,000/- (Rs.6,500/- x 6) towards loss of income for six months. In view



of the same, the claimant is not entitled to any enhancement towards loss of income, loss of earning capacity and disability. The amounts awarded by the Tribunal towards attendant charges and pain & suffering are meagre. Considering the nature of treatment taken by the claimant and the injuries sustained by her, this Court enhances the amounts to Rs.30,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby 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.	Loss of income	39,000	39,000	Confirmed
2.	Extra nourishment, transportation and damages	25,000	25,000	Confirmed
3.	Attendant charges	5,000	30,000	Enhanced
4.	Medical expenses	5,000	5,000	Confirmed
5.	Pain & suffering	25,000	50,000	Enhanced
6.	Disability	76,500	76,500	Confirmed
7.	Loss of earning capacity	2,53,500	2,53,500	Confirmed
8.	Loss of amenities	25,000	25,000	Confirmed
	Total	4,54,000	5,04,000	Enhanced by Rs.50,000/-

10. With the above modification, C.M.A.No.507 of 2016 filed by the respondent/Transport Corporation is dismissed and C.M.A.No.2606 of 2015 filed by the claimant is partly allowed. The compensation of Rs.4,54,000/- awarded by the Tribunal is hereby enhanced to Rs.5,04,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court



fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the entire award amount now determined by this Court 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 claimant is permitted to withdraw the entire amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The V Judge
Small Causes Court
The Motor Accident Claims Tribunal
Chennai.

+1 cc to M/s.M.Malar, Advocate Sr.No. 43020

+1 cc to M/s.K.J.Sivakumar, Advocate Sr.No.42730

AKM/19.09.19/5P-4C /

AKM/06.11.19

C.M.A.Nos.2606 of 2015 & 507 of 2016
and C.M.P.No.4301 of 2016