

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2902 of 2015

Vijayalakshmi

... Appellant/Petitioner

Vs

The Regional Manager,
Andhra State Transportation
Corporation Limited,
Thirupathi Bus Stand,
Thirupathi, Andhra Pradesh

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2011 made in M.C.O.P.No.913 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

For Appellant : Mr.D.Baskar
For Respondent : Ms.G.V.Shoba

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 18.02.2011 made in M.C.O.P.No.913 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvallur.

2.The brief facts is as follows:

On 23.04.2009 at about 9.40 pm while the petitioner was travelling as a passenger in Andhra State Transport Corporation bus bearing Reg.No.AP-28-Z-4686 at Chennai Koyambedu Bus stand at Platform No.4 & 5, the respondent's Andhra Transport Corporation bus bearing Reg.No.AP-28-Z-0096 was driven by its driver on the opposite side and suddenly reversed the bus in a rash and negligent manner and dashed against the bus in which

the petitioner travelled. Due to the said accident the petitioner sustained multiple fracture injuries on her right hand. The claimant claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident.

3.The respondent/Transport Corporation denied the mode of accident as alleged in the claim petition. The respondent also contended that the accident occurred due to the negligence on the part of the petitioner who was keeping her right hand outside the bus by violating traffic rules and without noticing the other vehicles entering into the bus stand. Hence, the negligence on the part of the appellant/claimant resulted in the accident. The sum claimed by the petitioner is excessive in the absence of any proof.

4.The Tribunal after analysing the evidence and documents has given a finding that the accident occurred due to the negligence on the part of the respondent's bus and awarded a sum of Rs.1,06,000/- as compensation under following heads.

Loss of earning	Rs.6,000/-
Transportation	Rs.1,500/-
Extra nourishment	Rs.1,000/-
Damages to clothing and articles	Rs.500/-
Medical expenses	Rs.37,000/-
Loss of pain and suffering	Rs.30,000/-
Permanent disability	Rs.30,000/-
Total	Rs.1,06,000/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellant has contended that the appellant sustained grievous injuries and her occupation being a tailor she lost her income for six months and due to hospitalisation for 21 days, hence it is the grievance of the appellant that the Tribunal has not awarded the sum towards loss of earning capacity and future loss of earning capacity. The sum awarded towards transportation to hospital at Rs.1,500/- is very much meagre. She was treated as in-patient for nearly 21 days for a periodical check-up. She visited the hospital for several occasions. The sum awarded under various heads is not reasonable. The other grievance raised by the appellant is that the Tribunal has not awarded any sum towards attendant charges. The Tribunal has not considered the evidence of PW2 and

disability assessed by him at 55% and the assessment of the Tribunal at 30% against the assessment of PW2 is very much on the meagre side. Further the Tribunal has not awarded a reasonable amount towards future treatment. Hence, on the whole the sum determined by the Tribunal has to be properly modified by setting aside the same.

6.Heard Mr.D.Baskar, learned counsel appearing for the appellant and Ms.G.V.Shoba, learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

7.Regarding the aspect of negligence the Tribunal has also fixed the liability on the part of the driver of the respondent bus by analysing Ex.P1/FIR, Ex.P5/charge sheet and RW1/Investigation Officer. RW1 with a view to absolve from his liability has stated that he was not at fault and no way responsible for the accident. So it is clear from the oral testimony of the PW1 coupled with Ex.P1 to P5 that the accident occurred only due to the rash and negligent driver of the offending vehicle by its driver. The Tribunal has also observed the said fact and fixed the monthly income of the appellant/claimant at Rs.3,000/- which is proper and reasonable.

8.On perusal of the records, it is seen that the appellant claimed her monthly income at Rs.8,000/- per month by stating that she was working as a tailor. The appellant/claimant was aged 18 years and considering the date of accident in the absence of any proof the income assessed by the Tribunal at Rs.3,000/- per month is very much reasonable. While verifying the loss of earning, the Tribunal has assessed the discharge summary, in which it has been categorically stated that the appellant/claimant was under treatment for nearly 21 days. For the first time she was admitted into hospital on 24.04.2009 and discharged on 28.04.2009. For the second time she was admitted into hospital on 28.04.2009 and discharged on 13.05.2009. Hence, the Tribunal by relying upon the said statements has awarded loss of income for two months during the treatment period. It is seen that the appellant/claimant sustained right humerus Grade III Medical epicondyle fracture, right arm traumatic laceration, internal degloving injury involving right arm and proximal right fore arm, right ulnar nerve contusion, right radial head fracture. In view of the said injuries, this Court is of the view that the loss of income assessed by the Tribunal for two months has to be modified to three months i.e. (Rs.3,000/- x 3) Rs.9,000/-. Similarly, it is seen that the claimant was admitted in the hospital twice and she was also treated surgically which

are very much proved by filing discharge summary as well as wound certificate, hence the sum awarded by the Tribunal towards transportation at Rs.1,500/- is modified as Rs.3,000/-. While verifying the sum awarded towards extra nourishment and damages to cloth are very much on the reasonable side and the medical expenses also properly considered by the Tribunal by verifying the medical bills which are filed by the claimant Ex.P10 & Ex.P11. The Tribunal also very much observed the period of treatment and nature of injuries sustained by the appellant and awarded a sum under the head pain & suffering at Rs.30,000/- which is very much reasonable and it does not require any modifications. It is seen from the award that the Tribunal has observed that PW2 who has calculated the disability at 55% has not given a calculation and proper assessment. Hence, the Tribunal has observing that the said disability at 55% is not proportionate to the injuries sustained by the appellant/claimant and awarded a sum of Rs.30,000/- towards permanent disability and loss of earning power.

9.The appellant vehemently contended that Ex.P13/photographs which are placed before the Tribunal to prove the deformity on the right hand due to the said accident and the Tribunal has also observed the fact that during the entire course of treatment for 21 days the appellant suffered with physical pain and mental strain and the sum awarded at Rs.30,000/- towards pain & suffering. In view of the above, this Court confirms the sum awarded towards pain & suffering and enhances the sum towards disability from Rs.30,000/- to Rs.40,000/- Further, it is also observed that the appellant/claimant sustained right humerus Grade III Medical epicondyle fracture, right arm traumatic laceration, internal degloving injury involving right arm and proximal right fore arm, right ulnar nerve contusion, right radial head fracture. The appellant has taken treatment in the hospital as in-patient for 21 days. The Tribunal has not awarded any sum towards attendant charges and this Court awards a sum of Rs.5,000/- towards attendant charges. The sum awarded by the Tribunal under other heads are 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)
1.	Loss of income	Rs.6,000/-	Rs.9,000/-
2.	Transportation	Rs.1,500/-	Rs.3,000/-
3.	Extra nourishment	Rs.1,000/-	Rs.1,000/-

4.	Damages to cloth and articles	Rs.500/-	Rs.500/-
5.	Medical expenses	Rs.37,000/-	Rs.37,000/-
6.	Loss of pain and suffering	Rs.30,000/-	Rs.30,000/-
7.	Permanent disability	Rs.30,000/-	Rs.40,000/-
8.	Attendant charges	-	Rs.5,000/-
	Total	Rs.1,06,000/-	Rs.1,25,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,06,000/- is hereby enhanced to Rs.1,25,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

11. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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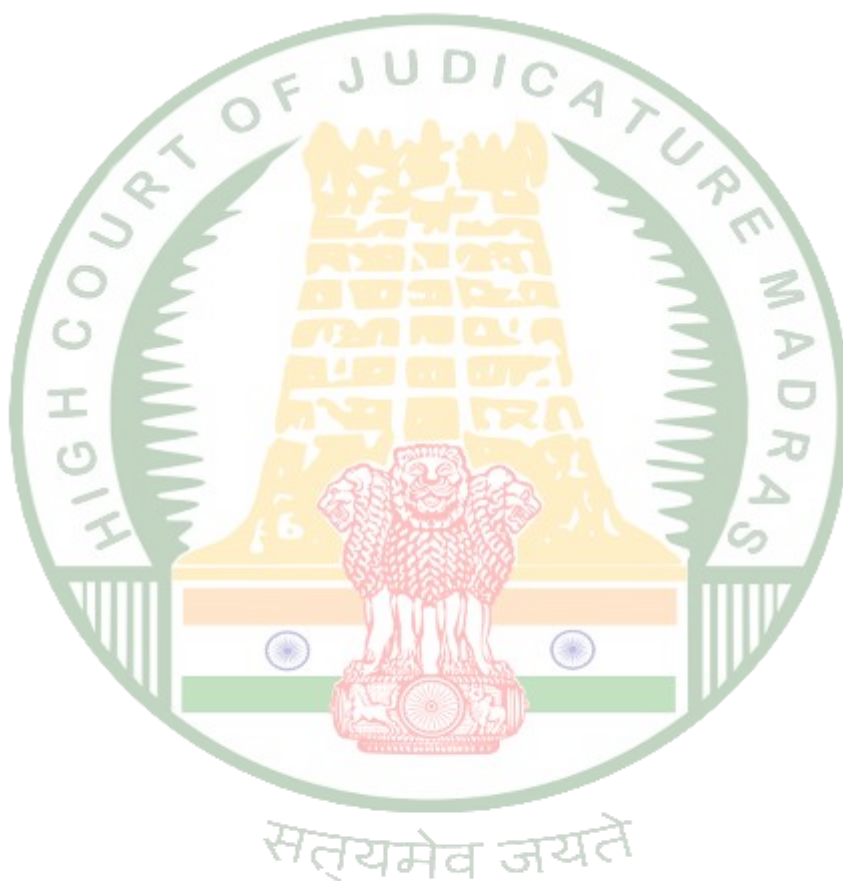
1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Thiruvallur.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Ms.G.V.Shoba, Advocate sr.61373

C.M.A.No.2902 of 2015

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