

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

C O R A M

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.842 OF 2011

Pachiammal

...Petitioner/Appellant

Vs

1. The Managing Director,
Tamilnadu State Transport Corporation
Limited, Division 2 Salem 7
2. The State Express Transport Corporation
Limited, Chennai. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 22.09.2010 made in MCOP.No.38 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem.

For Petitioner : Mr.K.Kuppusamy
For Respondents : Mr.Venkatachalam for R1
Mr.R.Annamalai for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the Judgment and Decree dated 22.09.2010 made in MCOP.No.38 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem.

2. The case of the appellant/claimant is that, on 12.11.2005 at about 04.00 a.m. the appellant traveled in the bus belongs to the first respondent. While the bus nearing Naripallam, the bus bearing registration No.T.N.29-N-1663 came from opposite direction and both the buses had head on collision and the accident was occurred. Due to the accident the appellant sustained multiple fracture all over the body and admitted in hospital for 47 days. Hence, he filed a claim petition in MCOP.No.38 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem, claiming a sum of Rs.5,00,000/- as compensation.

3. The first respondent filed a counter affidavit stating that driver of the bus bearing registration No.T.N.29-N-1633

drove the bus every carefully and slowly. The bus bearing registration No.T.N.01-N-6447, came in a wrong track and dashed against the bus bearing registration No.T.N.29-N-1633. Due to the negligence on the part of the second respondent driver the accident took place.

4. The second respondent filed a counter denying the allegation stated by the first respondent. The second respondent submitted that the bus bearing registration No.T.N.29-N-1633 came from opposite direction in a rash and negligent manner and head on collusion occurred.

5. On the side of the claimant/appellant, the claimant herself examined as P.W.1 and Dr.S.Sridhar was examined as P.W.3 and 9 documents were marked under Exs.P1 to P9. On the side of the respondents, first respondent's driver was examined as R.W.1 on behalf of the first respondent and no document has been marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the bus belonging to the respondents 1 and 2 and directed the both the respondents to pay the compensation at the ratio of 50:50. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellant contended that, the appellant sustained injuries in the right femur and SSG was also done to her. The appellant has taken treatment as in-patient from 12.11.2005 to 28.12.2005 for 47 days. The Tribunal failed to consider the prolonged treatment taken by the appellant for awarding higher compensation. The Tribunal erred in not awarding a sum of Rs.8,153/- which is the bill produced by the appellant pertaining to medical test in Diagnostic service. The Tribunal erred in awarding only a sum of Rs.45,000/- towards permanent disability. The Tribunal failed to see that the appellant has sustained 45% disability and hence entitled to Rs.90,000/- towards permanent disability. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

8. The learned counsel appearing for the respondents contended that the appellant did not prove the income and in the absence any evidence the Tribunal fixed a sum of Rs.3,000/- as notional income which is proper. The Tribunal considering the nature of injuries and treatment taken by the appellant has awarded compensation for three months towards loss of income which is not meagre. The amount awarded by the Tribunal under

different heads are not meagre and prayed for dismissal of the appeal.

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

10. From the materials available on record, it is seen that the appellant has contended that she is an agricultural coolie and earning a sum of Rs.5,000/-. In the absence of any evidence, the Court below has fixed the notional income at Rs.3,000/- per month and awarded a sum of Rs.9,000/- towards loss of income which is meagre. It is seen from Exs.P2 and P9/Discharge summaries that the appellant has taken treatment as in-patient for 47 days. Further she would have been treated as outpatient for some period. Hence, the appellant is entitled loss of income for the period of four months. Thus, the amount awarded by the Tribunal towards loss of income is modified to Rs.12,000/- (Rs.3,000/- X 4 months). The amount awarded by the Tribunal towards loss of amenities and pain and suffering are meagre and the same are enhanced to a sum of Rs.10,000/- and 20,000/- respectively. The Tribunal has not awarded any amount towards attender chargers. A sum of Rs.10,000/- is awarded towards attender charger. The amounts awarded by the Tribunal under other heads 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.	Transportation	2,000	5,000	Enhanced
2.	Medical Nourishment	1,32,190	1,32,190	Confirmed
3.	Extra Nourishment	5,000	5,000	Confirmed
4.	Pain and Suffering	15,000	20,000	Enhanced
3.	Disability	45,000	45,000	Confirmed
4.	Loss of Income	9,000	12,000	Confirmed
5.	Loss of Amenities	5,000	10,000	Enhanced
6.	Attender Chargers	-	10,000	
	Total	2,13,190/-	2,39,190/-	Enhanced by Rs.26,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,13,190/- is hereby enhanced to Rs.2,39,190/- 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. Both the respondents are directed to deposit the enhanced award amount now determined by this Court in the ratio 50:50 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Salem.
2. The Section Officer,
VR Section, Madras High Court.

+lcc to Mr.K.Kuppusamy, Advocate, S.R.No.104376
+lcc to Mr.R.Annamalai, Advocate, S.R.No.103973
+lcc to Mr.D.Venkatachalam, Advocate, S.R.No.104318

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PVS (CO)
CS/19/11/2020

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