

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3494 of 2012

Mrs. S.Shyamala

... Appellant/Petitioner

..Vs..

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Salai
Chennai - 600 002.

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 02.03.2011, in MCOP.No.4772 of 2005 on the file of the Motor Accidents Claims Tribunal, V Fast Track Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondent : Mr.S.Swaminathan

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 4772 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, V Fast Track Court, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,50,000/- for the injuries sustained by her in a road accident that took place on 03.10.2005, when she was walking on Santhome high road, at about 18.30 hours.

2.According to the appellant/claimant, a speeding bus bearing Registration No. TN 02 AB 0008 belonging to the Metropolitan Transport Corporation Limited, hit her, as a result of which, she sustained grievous injuries all over her body. It is further contented by her that the rash and negligent driving of the driver of the bus bearing Registration No. TN 02 AB 0008 was the cause of the accident and therefore, the Metropolitan Transport Corporation Limited is liable to pay compensation to her.

3.The Metropolitan Transport Corporation Limited contested the claim petition and the learned Additional District Judge, V Fast Track Court, Chennai after analysing the evidence on record, fixed the negligence on the part of the driver of the bus bearing Registration No. TN 02 AB 0008 belonging to the respondent and awarded a compensation of Rs.85,000/- together with interest at the rate 7.5% per annum to the claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.T.Balachandran, learned counsel appearing for the appellant would contend that when the claimant has produced medical bills to the tune of Rs.66,809/-, the tribunal has awarded only a sum of Rs.25,000/- towards medical expenses and very meagre amounts were awarded under the heads transportation and extra nourishment. He would further contend that only a sum of Rs.38,000/- was awarded towards partial permanent disability especially, when, Dr.K.J.Mathialagan (PW2) has assessed the partial permanent disability as 40%. He therefore would contend that the award passed by the tribunal is liable to be enhanced.

6.Per contra, Mr.S.Swaminathan, learned counsel appearing for the respondent would contend that the tribunal after considering various aspects, awarded a just compensation and the same need not be disturbed at this juncture.

7.A perusal of the records shows that the appellant/claimant was a women entrepreneur manufacturing pickles and other eatables and was aged 61 years on the date of the accident. It is further contented by the appellant/claimant that she was earning a sum of Rs.3,000/- per month and has sustained multiple fractures all over her body. Dr.K.J.Mathialagan (PW2) has assessed the partial permanent disability as 40% and the tribunal without assigning any reason awarded only a sum of Rs.38,000/- towards partial permanent disability.

8.The tribunal has awarded a sum of Rs.25,000/- towards medical expenses when the appellant/claimant has produced medical bills to the tune of Rs.66,809/-. The tribunal, infact, did not take into consideration, the medical bills dated 06.10.2005, 18.02.2006, 28.09.2009 and 12.10.2009 by observing that all those bills appear new and fresh. This observation of the tribunal, in this regard, is based on surmises and conjunctures and therefore, a sum of Rs.66,809/- is awarded towards medical expenses. As already observed, Dr.K.J.Mathialagan (PW2) has assessed the partial permanent

disability as 40% and since there is no functional disability, a sum of Rs.2,000/- per percentage is awarded which would come to Rs.80,000/-. The enhanced compensation under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.80,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.10,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Loss of income	Rs.18,000/-
6.	Loss of amenities	Rs.10,000/-
7.	Medical expenses	Rs.66,809/-
8.	Towards materials	Rs.5,00/-
9.	Attender's charges	Rs.5,000/-
Total		Rs.2,20,309/-

Thus, the appellant/claimant is entitled to a sum of Rs.2,20,309/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.85,000/- to Rs.2,20,309/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The respondent/Metropolitan Transport Corporation Limited is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.4772 of 2005 on the file of the Motor Accidents Claims Tribunal, V Fast Track Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the respondent, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

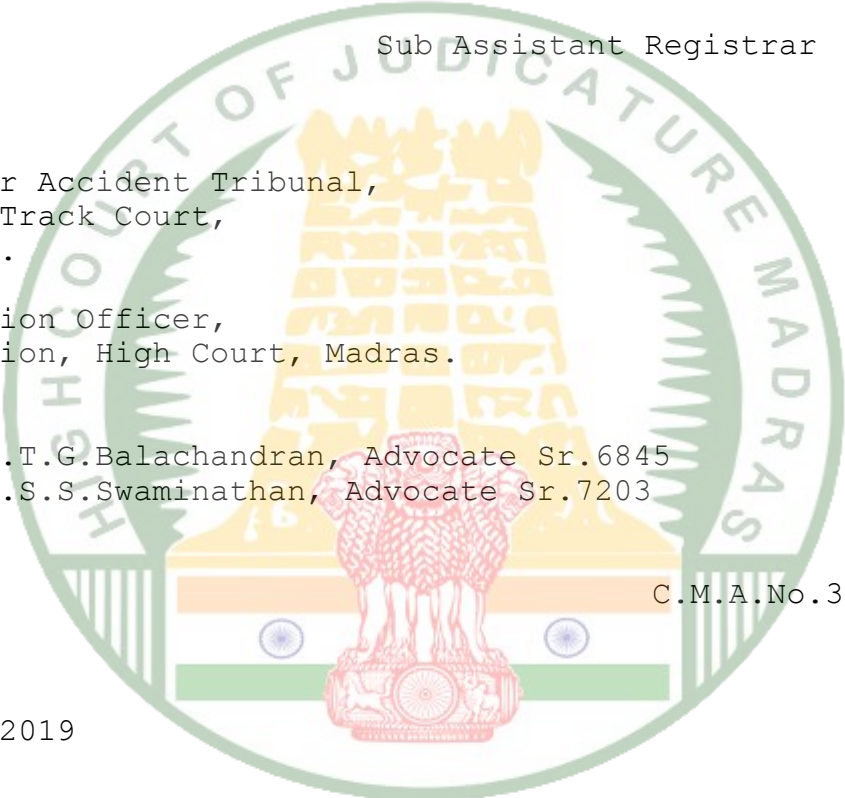
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To

- 1.The Motor Accident Tribunal,
V Fast Track Court,
Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.T.G.Balachandran, Advocate Sr.6845
+1cc to Mr.S.S.Swaminathan, Advocate Sr.7203

C.M.A.No.3494 of 2012

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srg 01/04/2019



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