

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2727 of 2019

Reena

... Appellant/Petitioner

Vs

1.The Managing Director
M.T.C.Ltd., Pallavan House,
Annasalai, Chennai - 2.

2.M.Sagaptheen
(R2-Already set Exparte in Lower Court)
(R2-Notice may be dispense with)

3.Reliance General Insurance Co. Ltd.,
RAIS Towers, Plot No.2504, 2nd Avenue,
2nd Floor, (Near Senthil Nursing Home)
Anna Nagar,
Chennai - 600 040.

: Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2018 made in M.C.O.P.No.3446 of 2014 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Ms.Vaijayanthi Baskar
for Mr.J.Mahalingam

For R1 : Mr.S.V.Vasanthakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 22.10.2018 made in M.C.O.P.No.3446 of 2014 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.The brief facts is as follows:

On 09.04.2013 at about 14.00 hours the petitioner was boarded as passenger in Auto rickshaw bearing Reg.No.TN-05-R-2754 at Rajaji Salai, near Aavin milk both which was stationed facing towards south to north. At that time, the MTC bus bearing Reg.No.TN-01-N-8667 driven rashly and negligently by its driver in a manner endangering to the public safety came at a dangerous speed from the same direction and dashed against the Auto rickshaw from the back side and caused grievous injuries to the petitioner. She incurred heavy medical expenses, disability, loss of income and loss of amenities and on the whole the appellant/injured claimed a sum of Rs.6,00,000/- as compensation.

3.The 1st respondent/Transport Corporation denied the mode of accident as alleged in the claim petition. The Transport Corporation also denied the occurrence of accident and injuries sustained by the petitioner and stated that the driver of the Transport Corporation drove the vehicle with due care and caution observing traffic rules. The driver of the Transport Corporation was not rash and negligent at the time of accident. In the FIR, the petitioner's husband who travelled along with her in the Auto clearly mentioned the Regn.No. And Route No.of the bus regarding the accident. But in the hospital accident register, he did not mention the Route No. and Registration No. of the bus. He only mentioned that "while travelling in a Auto it was bit by a bus". Hence, the respondent/Transport Corporation totally denied the liability and apart from that denied the claim made by the appellant under various heads is excessive in the absence of any proof.

4.The 3rd respondent/Insurance Company also denied the mode of accident as alleged in the claim petition. It is contended that the accident was only due to rash and negligence of the driver in charge of the MTC bus bearing Reg.No.TN-01-N-8667 who drove the vehicle rashly and negligently due to which the petitioner sustained injury. The sum claimed by the claimant under various heads also excessive in the absence of any proof.

5.The Tribunal after analyzing the evidence and documents has placed before the same, fixed the liability on the part of the bus which belongs to the respondent/Transport Corporation by verifying the Ex.P1/FIR, Ex.P2/rough sketch and Ex.P3/OP Chit and Ex.P.4/discharge summary, it is clear that the accident took place due to the rash and negligent driving of the driver of the bus. By verifying Ex.P4/discharge summary and Ex.P10/disability certificate which reveal the fact that the claimant /appellant sustained 40% disability and the Tribunal also considering the

nature of injuries sustained by the appellant and also the medical expenses incurred by the appellant, pain & suffering and the sum spent by her for extra nourishment and loss of income, and awarded the compensation under various heads as follows:

Disability	Rs.30,000/-
Pain & suffering	Rs.10,000/-
Extra nourishment	Rs.5,000/-
Transportation to Hospital	Rs.5,000/-
Damages to clothes	Rs.500/-
Attender charges	Rs.2,000/-
Medical expenses	Rs.7,500/-
Future Medical expenses	Rs.5,000/-
Loss of income	Rs.6,500/-
Loss of amenities	Rs.2,500/-
Total	Rs.74,000/-

Aggrieved against the said award the claimant has preferred this appeal.

6. In the grounds of appeal, the appellant has contended that when the Tribunal has given a finding that the negligent driving on the part of the driver of the Metropolitan Transport Corporation bus resulted in the accident, the sum awarded by the Tribunal at Rs.74,000/- as compensation is meagre and it is not reasonable and justifiable amount. PW2/Doctor assessed the disability of the appellant is on the higher side. The appellant has sustained fracture of right tibia and other serious multiple injuries all over the body. The appellant was taken treatment in hospital as in-patient from 22.05.2013 to 30.05.2013 and as out-patient for several months. Hence, this aspect were not considered by the Tribunal. The Tribunal has awarded very meager sum as compensation as against the principles laid down by the Hon'ble High Court and Hon'ble Supreme Court. PW2/Doctor who deposed before the Tribunal assessed the disability as 40% whereas the Tribunal has taken only 10% and the sum awarded at Rs.3,000/- is very much on the meagre side. The Tribunal has not awarded any amount towards loss of earning and loss of future earning power, without considering the fact that the appellant was earning a sum of Rs.8,000/- per month by working as a cook. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Heard Ms.Vaijayanthi Baskar for Mr.J.Mahalingam, learned counsel appearing for the appellant and Mr.S.V.Vasanthakumar, learned counsel appearing for the 1st respondent and perused all the materials available on record.

8.On perusal of the records, it is seen that the injured/claimant is aged about 30 years at the time of accident. The nature of injuries sustained by the claimant was very much reveal from the Ex.P4/discharge summary and also medical bills. The appellant has taken treatment as in-patient in a hospital from 22.05.2013 to 30.05.2013. PW2/Doctor assessed the disability of the appellant as 40% as per Ex.P10/disability certificate and the Tribunal reduced the same to 10%. The Tribunal by considering 10% of disability and fixing Rs.3,000/- per percentage, has awarded a sum of Rs.30,000/- towards disability which is very much aggrieved by the appellant. The claimant sustained fracture on right tibia and other serious multiple injuries all over the body and she was hale and healthy at the time of accident. She has lost her income during the treatment of period as in-patient and also she incurred huge medical expenses and these aspects were not considered. The 1st respondent has argued that the sum determined by the Tribunal is very much reasonable. In the absence of producing the documents to substantiate the contention that she was working as a cook and earning a sum of Rs.8,000/- per month. In view of the injuries sustained by the claimant and the expenses incurred by her for her treatment as in-patient and also as out-patient for some period, this Court finds it proper to enhance some amount. Accordingly this Court modifies the disability at 40% and by taking Rs.1,000/- per percentage granted a sum of Rs.40,000/- under the head disability. The amount awarded by the Tribunal towards attendant charges and loss of amenities are also enhanced to Rs.3,000/- and Rs.5,000/- respectively under those heads. The amount 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.	Disability	Rs.30,000/-	Rs.40,000/-
2.	Pain and suffering	Rs.10,000/-	Rs.10,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.5,000/-

4.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
5.	Damages to clothes	Rs.500/-	Rs.500/-
6.	Attender charges	Rs.2,000/-	Rs.3,000/-
7.	Medical expenses	Rs.7,500/-	Rs.7,500/-
8.	Future medical expenses	Rs.5,000/-	Rs.5,000/-
9.	Loss of income	Rs.6,500/-	Rs.6,500/-
10.	Loss of amenities	Rs.2,500/-	Rs.5,000/-
	Total	Rs.74,000/-	Rs.87,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.74,000/- is hereby enhanced to Rs.87,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st 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 twelve 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

// True Copy //

Sub Assistant Registrar

mtl

To

1.The III Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

C.M.A.No.2727 of 2019

NMI (CO)
CSR: 04/02/2020



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