

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.38 of 2014

A.Jareena Kareem

... Appellant/ Petitioner

- Vs -

Metropolitan Transport Corporation
[Chennai] Ltd., rep. By its
Managing Director,
Pallavan Salai,
Chennai-600 002.

... Respondent/ Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 21.06.2013 made in MACT.O.P.No.2684 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondent : Mr.S.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, who was the claimant before the Court below is aggrieved by the Judgment and decree dated 21.06.2013 made in MACT.O.P.No.2684 of 2007 by the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai raising the following grounds:-

1. the appellant had suffered compound injury with right leg, crush injury over right leg and lacerated injury over right leg with bones exposed, crush injury over right foot and head injuries. She was treated as in-patient at St. Isabel's hospital, Mylapore from 14.10.2006 to 23.10.2006. During the course of treatment surgeries conducted external fixation and K-wire fixation done. Skin grafting also done. Then, she was treated as out-patient at Sri Visa Clinic, T.Nagar. The Court below awarded a sum of Rs.35,000/- for pain and suffering as against the claim of Rs.2,00,000/-.
2. The appellant suffering with 60% total and permanent disablement and the Court below reassessed the disability to 30% without any reason.

3. The appellant being the saree and cloth seller, earned Rs.10,000/- at the time of accident. The Court below has fixed the income of Rs.4,000/- as there is no documentary evidence and on applying multiplier 15, arrived at a sum of Rs.3,60,000/- with a reasoning that the appellant is suffering with 50% disablement. Eventhough the disablement is at 50%, the Court below ought to have fixed the loss of income at 100% and also ought to have awarded more compensation.
4. Due to the injury sustained, she was lost her income. The Court below awarded a sum of Rs.24,000/- for six months, which is not correct.
5. The claim of Rs.1,30,000 for mental agony, due to deformity of right leg, has not been considered by the Court below.

2. The case of the appellant is that she was travelling in a bus bearing registration no.TN-02-N-0399, route No.11-A, from Vallallar Nagar to Pondy Bazaar, T.Nagar, on 14.10.2006 at about 21.00 hours, while the bus was proceeding along Sir Thiagaraya Road, the conductor of the bus announced to the passengers that due to Deepavali crowd at Pondy Bazaar, the bus will be proceeding along Thanikachalam road and asked the passengers to get down at the junction of Thanikachalam road. The driver of the bus stopped at the junction of Thanikachalam road, the passengers were getting down and while the appellant was getting down, the conductor blew the whistle and driver started the bus in a rash and negligent manner, due to which, she fell down and sustained injuries and prayed for compensation of Rs.20,00,000/- from the respondent.

3. The respondent herein filed a detailed counter denying all the allegations and submitted that no such accident has been taken place as per their investigation and they prayed for dismissing the claim petition and further submitted that the claim is very exaggerated.

4. On the side of the appellant/claimant, two witnesses were examined and Exs.P1 to P12 were marked. On the side of the respondent, one witness has been examined no exhibit was marked. The Court below, after considering the materials on record, awarded a sum of Rs.5,43,000/- as compensation, by judgment dated 21.06.2013. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the appellant was earning a sum of Rs.10,000/- per month and the Court below awarded only a sum of Rs.24,000/- for six months and the same has to be increased. The Court below awarded a sum of Rs.3,60,000/- for disability and the same has

to be increased. As she had sustained grievous injuries, the Court below restricted the disability at 50% and the same has to be increased. The amount awarded for pain and suffering is Rs.35,000/- and the same ought to have been increased by adding some more amounts and also prayed for awarding more amount for extra nourishment, transportation, damages to cloths and attender charges.

6. The learned counsel for the respondent submitted that when they themselves denied the entire liability, the amount awarded by the Court below has to be set aside and prayed for reducing the same under various heads.

7. On going through the materials available on record, this Court is of the view that the appellant herein had sustained grievous injuries and she had been taking treatment from 14.10.2006 to 23.10.2006 and the discharge summary would also prove the same and on 15.10.2006 K wire fixation of medial malleolus fracture was done and SSG was done on 18.10.2006. The disability has been fixed by PW-2/Doctor, who was examined later, opined that the appellant sustained fracture both bones right leg and surgery has been done to correct the same and the leg movement is restricted and she could not walking fast, climbing steps, sitting cross legged or squatting and hence, assessed disability at 40% for fracture of both bones and 20% disability for crush injury right foot, in total assessed as 60% partial permanent disability. The injured was 42 years at the time of accident and the Court below has come to the conclusion that she was a Saree vendor and her leg movement is restricted and held that two different disabilities cannot be merged into one and fixed the liability for total permanent disability as per the Workmen Compensation Act at 50%. This Court is not inclined to interfere with the same. The nature of injury sustained by the appellant, the Court below awarded a sum of Rs.3,60,000/- by applying multiplier 15 and the same is reasonable. On perusing the amount awarded towards Medical bills, it is seen that the medical bills produced only for Rs.54,536/- and no other bill has been produced before this Court to show that she had spent a sum of Rs.1,00,000/- for Medical expenses. The Court below, without any valid material, has erroneously awarded a sum of Rs.1,00,000/- towards Medical expenses. This Court is inclined to reduce the same to Rs.54,536/- under the head of Medical Expenses. As it was informed by the learned counsel for the respondent that the entire amount has been already deposited and the same has been withdrawn by the appellant/claimant, the appellant/claimant is directed to deposit a sum of Rs.45,000/- within a period of eight weeks from the date of receipt of a copy of this order, failing which, the respondent shall recover the same by filing proper application before the Tribunal.

8. This Civil Miscellaneous Appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(AD I MDU)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Judge,
IV Small Causes Court,
Motor Accident Claims Tribunal, Chennai.

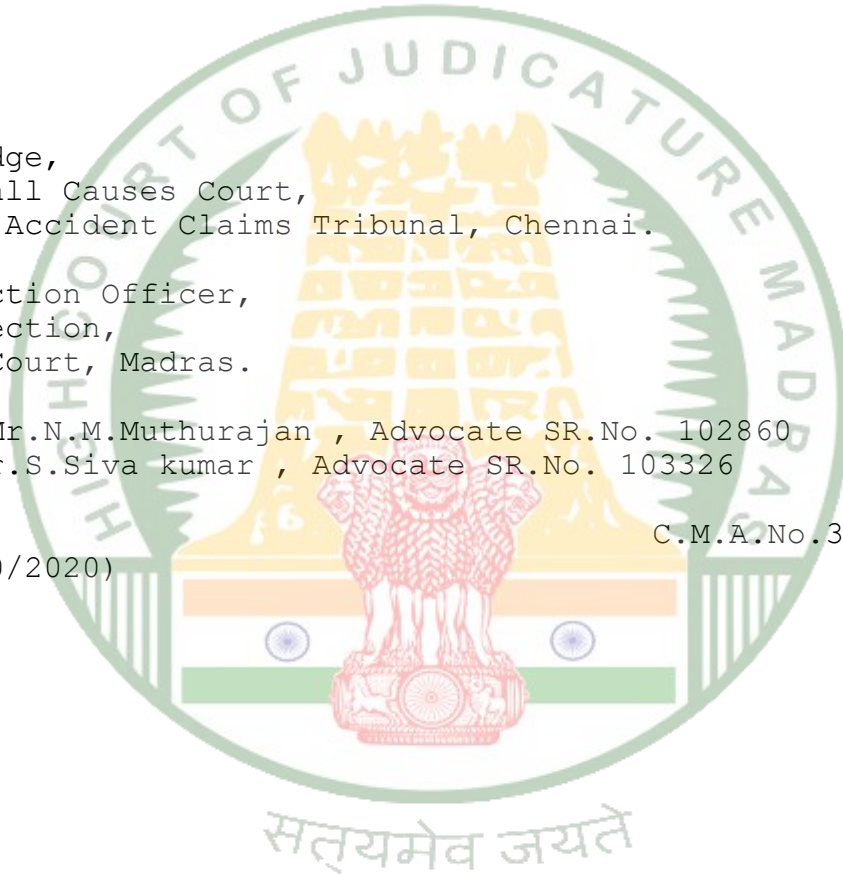
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to Mr.N.M.Muthurajan , Advocate SR.No. 102860

+1cc to Mr.S.Siva kumar , Advocate SR.No. 103326

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A.SK(01/10/2020)



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