

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.511 OF 2014

AND

C.M.P.NO.1 OF 2014

Thulasi

.. Appellant/Petitioner

Vs.

1. The Managing Director,
Karnataka State Transport Corporation Limited,
Bangalore, Karnataka.
2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Dharmapuri.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 04.04.2013 made in M.C.O.P.No.336 of 2011 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Ms.A.Subathra

For Respondents : Mr.T.Thiyagarajan - R1
Mr.D.Venkatachalam - R2

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.336 of 2011, on the file of the learned Chief Judicial Magistrate/Motor Accident Claims Tribunal, Thiruvannamalai. She has filed the said petition under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T. Rules, claiming compensation for the injuries sustained by her in a road accident that took place on 30.10.2010.

2. The case of the claimant is that on 30.10.2010, the appellant was traveling as a passenger in a bus bearing Registration No. KA 40 F 136 belonging to the first respondent

viz., Karnataka State Transport Corporation Ltd. And at about 11.30 hours, when the bus was nearing Chottaiya Gounder's land, Eraiyur cross Road on Thiruvannamalai - Chengam road, the driver of the bus drove the bus rashly and negligently and hit another bus, coming on the opposite direction, belonging to the second respondent viz., Tamil Nadu State Corporation Limited, bearing Registration No.TN N 1726, as a result of which, the appellant sustained grievous injuries.

3. The respondents 1 and 2 contested the claim petition and the Tribunal after analysing the evidence on record, awarded a compensation of Rs.1,93,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further directed the respondents 1 and 2 to pay the compensation in the ratio 50:50. Not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant has filed the present appeal.

4. The appellant has filed a miscellaneous petition in M.P.No.1 of 2014 to receive the additional documents. This Court, after hearing the arguments of the learned counsel for both sides, allowed the petition today and documents were taken on record as Ex.P26 to Ex.P29.

5. Ms.A.Subathra, learned counsel appearing for the appellant would submit that the claimant had sustained multiple fractures and grievous injuries all over her body and that though the claimant is a daily labourer, earning a sum of Rs.10,000/- per month, the Tribunal has awarded a very meagre amount of Rs.1,93,000/- as compensation. She would further contend that the claimant could not continue to do her her work on account of the accident and therefore, the compensation awarded by the Tribunal should be enhanced.

6. Per contra, the learned counsel appearing for both the respondents contended that the Tribunal has considered all the aspects of the case and awarded a just compensation of Rs.1,93,000/- and the same need not be disturbed at this stage.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel for the first and second respondents and also perused the materials available on record.

8. A perusal of the discharge summary (Ex.P13) shows that the claimant had dislocation of right hip Grade-1 Supra condyler with fracture extending to intercondyler region and also Grade-III compound fracture on her right leg. She was admitted as an inpatient in th Government General Hospital, Chennai on 30.10.2010 and was discharged on 25.11.2010.

9. Dr.Ravindran (P.W.9), has assessed the partial permanent disability as 70%. The Tribunal had reduced the same to 60% and awarded a sum of Rs.1,20,000/- by awarding Rs.2,000/- per percentage of disability and no reason was assigned by the Tribunal for reducing the percentage of disability.

10. The specific contention of the learned counsel appearing for the appellant/claimant is that the claimant suffered permanent disability as a result of the injuries and therefore, the assessment of compensation under the head of loss of earning capacity depends upon the effect and impact of such permanent disability. In order to ascertain the real facts, the claimant was directed to appear before this Court. Accordingly, the claimant appeared and explained before this Court that she had fractures on her right side of the leg and hand. In the decision in Rajkumar Vs.Ajaykumar and another reported in 2011(1) SCC 343 it is held that where the claimant suffers permanent disability as a result of the injuries the assessment of compensation under the head 'loss of future earnings' would depend upon the effect and impact of such permanent disability on his earning capacity and that the Tribunal should not mechanically apply the percentage of disability as the percentage of economic loss or loss of earning capacity arising out from a permanent disability would be differed from the percentage of permanent disability. Since, it is contended that the claimant is a daily labourer, multiplier method is warranted in the present case. The age of the claimant is 34 years and the proper multiplier to be adopted in the instance case is '16' as per the decision of the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since no income proof is produced by the claimant, the monthly notional income of the claimant is fixed as Rs.4,500/-. Dr.Ravindran (PW9) has assessed the partial permanent disability as 70%. Since multiplier method is adopted here, the disability cannot be extended to the whole body and therefore, 20% of the disability is taken up for calculating the loss of earning capacity.

$$\text{Rs.4500/-} \times 12 \times 16 \times 20\% = \text{Rs.1,72,800/-}$$

11. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of earning capacity	1,72,800/-
2.	Loss of Pain and sufferings	15,000/-
3.	Extra nourishment	5,000/-
4.	Transportation	2,000/-
5.	Damage of cloth	500/-
6.	Medical Bills	17,914/-
7.	Attender charges	1,000/-
8.	Loss of income	27,000/-
	Total	Rs.2,41,214/-

12. Thus the compensation awarded by the Tribunal is enhanced to Rs.2,41,214/- which would carry interest at the rate of 7.5% per annum.

13. As far as the negligence aspect is concerned, the Tribunal concluded that there is composite negligence on the part of the drivers of both the vehicles and directed all the respondents to pay the compensation in the ratio of 50:50. The observations made by the Tribunal in this regard is perfectly in order and in fact the tribunal has assigned cogent reasons for arriving at such a conclusion.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and both the respondents are directed to deposit the entire compensation amount of Rs.2,41,214/- together with interest at the rate of 7.5% per annum in the ratio of 50:50, (less the amount already deposited), within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.336 of 2011, dated 04.04.2013, on the file of the Chief Judicial Magistrate/Motor Accident Claims Tribunal, Thiruvannamalai. On such deposit being made by the respondents, the appellant is at liberty to withdraw the award amount together with interest, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvannamalai.
2. The Managing Director,
Karnataka State Transport Corporation Limited,
Bangalore, Karnataka.
3. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Dharmapuri.
4. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.83768
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.83869
+1cc to Mr.M.Malar, Advocate, S.R.No.84076

C.M.A.No.511 of 2014
and C.M.P.No.1 of 2014

LN(CO)
CS/08/06/2020



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