

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.534 of 2014

Mumtaz

... Appellant

Vs.

Metropolitan Transport Corporation Limited,
Rep. By its Managing Director,
Pallavan House, Pallavan Salai,
Chennai - 2.

... Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 05.12.2012 made in M.C.O.P.No.2596 of 2011 on the file of Motor Accident Claims Tribunal (V Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.Sivakumar

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.12.2012 made in M.C.O.P.No.2596 of 2011 on the file of Motor Accident Claims Tribunal (V Small Causes Court), Chennai.

2. The case of the appellant is that on 22.04.2011 at about 21.10 hours, the appellant was travelling as an occupant in the bus bearing Reg. No.TN-01-N-8268 belonged to the respondent, at a place near Rajaji Salai, RBI Subway Centre. At that time, the driver of the bus, drove the bus in a rash and negligent manner and hit against the Centre Median. Due to which, the appellant sustained multiple injuries all over the body, therefore, she was taken to the Government General Hospital, Chennai, on the same day. After the treatment at Government General Hospital, Chennai, she discharged on 23.04.2011 and she took further treatment at Puttur Native Hospital. Prior to the accident, she was doing Appalam Business and she was earning Rs.300/-

per day. Since she had sustained injury in the accident, she filed a Claim Petition under Section 166 of Motors Vehicle Act, against the respondent transport corporation who is the owner of the bus which made accident, before the Motor Accident Claims Tribunal (V Small Causes Court), Chennai, claiming Rs.3,00,000/- as compensation under various heads.

3. Denying the allegations of the appellant/claimant, the respondent transport corporation filed a counter affidavit before the Tribunal, submitting that on the date and time of accident, the respondent's bus was on its schedule trip proceeding from Kovalam to Tollgate. When the bus reached near Reserve Bank Subway, the bus driver saw the road was covered by heavy flow of water due to heavy rain and was very anxious to cross the subway carefully under the pressure of not to struck off the engine and should be driving the bus very safely. But suddenly, an unknown auto rickshaw struck off and stopped on the centre of the subway in front of the respondent's bus. On seeing this unexpected event, the bus driver applied sudden brake intending to avoid the accident with the auto rickshaw. By applying sudden brake, the left front tyre slipped and pulled the respondent's bus towards the right side of the subway and hit on the centre side pillar of the subway. In this unexpected event, some passengers sustained simple injuries. This accident was unnatural and inevitable, and there was no negligence on the part of the driver of the bus. Hence, sought for dismissal of the petition filed by the claimant.

4. During the trial before the Tribunal, on the side of the appellant/claimant, the claimant herself examined as P.W.1 and filed the following documents i.e. Exs.P1 to P9.

- Ex.P1 : Discharge Summary
- Ex.P2 : AR Copy
- Ex.P3 : Copy of F.I.R.
- Ex.P4 : Copy of Rough Sketch
- Ex.P5 : Copy of Charge Sheet
- Ex.P6 : Medical prescriptions
- Ex.P7 : X-ray film
- Ex.P8 : X-ray film
- Ex.P9 : Disability Certificate

One Dr.N.Saichandran was examined as P.W.2 on the side of the claimant. On the side of the respondent, Mr.Paramalai (Driver of MTC bus) was examined as R.W.1 and no documents were filed.

5. The Tribunal, after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to rash and negligent manner of driving of driver of the respondent's bus. After considering the evidence of the Doctor, the Tribunal has fixed the disability of the claimant as 35% and awarded Rs.1800/- per percentage considering the age of the claimant. The claimant has not produced any supporting documents to prove that she was earning Rs.300/- per day prior to the accident. However, considering the injuries sustained by her, the Tribunal has come to the conclusion that she would have suffered loss of income due to restriction of movement. As such, the Tribunal, considering all the above aspects, allowed the petition filed by the claimant and awarded Rs.94,000/- as compensation to the claimant under various heads, which are as follows:

S.No.	Description	Amount awarded (Rs.)
1.	Loss of earning	5,000
2.	Transport to Hospital	7,000
3.	Extra Nourishment	3,000
4.	Damage to clothes	1,000
5.	Pain and Suffering	15,000
6.	Disability at 35% at Rs.1800/- per percentage	63,000
	Total	94,000

Aggrieved by the award, the appellant/claimant has filed this appeal before this Court.

6. The learned counsel for the appellant would submit that prior to the accident, the appellant was able to do work and she earned more money by selling Appalam, and therefore, she seeks to enhance the amount Rs.1800/- as Rs.3000/- per percentage from the disability of 35% fixed by the Tribunal.

7. The learned counsel for the respondent transport

corporation would vehemently argue that there is no proof filed regarding the disability sustained, and the doctor who witnessed before the Tribunal is not the person actually treated the claimant. But, considering his evidence and documents produced, the Tribunal has come to the conclusion that the claimant would have suffered loss of income due to restriction of movement due to disability.

8. Though there is no supporting evidence to show that the appellant/claimant was earning Rs.300/- per day, but, considering the injuries and fracture sustained by her, she would not have gone for work atleast for two months and she would have suffered a Loss of earning of minimum of Rs.3,000/- per month. Therefore, the amount Rs.5,000/- awarded by the Tribunal towards Loss of earning is hereby enhanced to Rs.6,000/-. The Tribunal has not awarded any amount towards Medical expenses. Considering the nature of injuries and disabilities suffered by the appellant, a sum of Rs.3,000/- is granted towards Medical expenses for taking treatment at puttur native hospital. The Tribunal has granted only a sum of Rs.15,000/- towards pain and suffering, and it is hereby enhanced to Rs.20,000/- as the appellant is aged 50 years. She has suffered 35% disability due to the injuries sustained in the accident, and the amount of Rs.1,800/- awarded by the Tribunal per percentage is not correct. Hence, it is hereby enhanced at the rate of Rs.3,000/- per percentage for the disability of 35% fixed by the Tribunal as prevailed at the time of consideration. Accordingly, the appellant is entitled to a compensation of Rs.1,05,000/- (35 X 3,000) towards disability. The amounts 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 the Tribunal (Rs .)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of earning	5,000	6,000	Enhanced
2	Transport to Hospital	7,000	7,000	Confirmed
3	Medical expenses	3,000	3,000	Granted
4	Extra Nourishment	3,000	3,000	Confirmed

5	Damage to clothes	1,000	1,000	Confirmed
6	Pain and Suffering	15,000	20,000	Enhanced
7	Disability at 35% at Rs.1800/- per percentage	63,000	1,05,000	Enhanced
	Total	94,000	1,45,000	Enhanced by Rs.51,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation Rs.94,000/- awarded by the Tribunal by order dated 05.12.2012 in M.C.O.P.No.2596 of 2011, is hereby enhanced to Rs.1,45,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondent transport corporation is directed to deposit the enhanced award amount with interest as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. After depositing the amount, the appellant/claimant is directed to file a formal petition before the concerned court and withdraw the amount, less the amount if any, already withdrawn, within a period of two weeks. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raja
To

The Motor Accident Claims Tribunal (V Small Causes Court),
Chennai.

+1cc to Mr.K.VaradhaKamaraj , Advocate SR.No. 50421
+1cc to Mr.S.Sivakumar, Advocate SR.No. 51089

C.M.A.No.534 of 2014

A.SK(21/10/2019)