



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.939 of 2019

and

C.M.P. (MD) .Nos.10142 of 2018 and 5089 of 2019

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The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.2, Pallavansalai,
Chennai.

... Appellant/ Respondent

Vs.

M.Bhavani

... Respondent/ Petitioner

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 13.04.2018, passed in M.C.O.P.No.23 of 2016 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

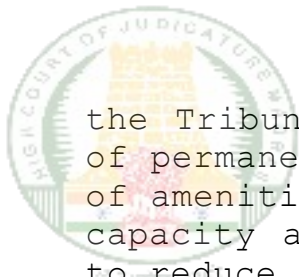
For appellant	:	Mr.P.Prabhakaran
For respondent	:	Mr.M.Jothi Basu

JUDGMENT

This appeal has been filed by the appellant / Transport Corporation challenging the award, dated 13.04.2018, passed in M.C.O.P.No.23 of 2016.

2. It is a case of injury. Though the injured claimant claimed Rs.20 lakhs as compensation, the Tribunal has awarded a sum of Rs.11,51,528/- as total compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realization in favour of the claimant / respondent herein. Aggrieved by the award passed by the Tribunal, the appellant / Transport Corporation has filed this appeal questioning liability as well as quantum.

3. The learned counsel appearing for the appellant / Transport Corporation would submit that since the lorry bearing Registration No.TN-55-A-2937, which was over-loaded with steel rolling rod, without any signal or indication stopped the vehicle on the road, the Transport Corporation bus, which came in the backside of the lorry, dashed against the lorry and the Court below, without considering the above aspects, has erroneously fixed entire liability on the driver of the Transport Corporation. Thus, he prayed to exonerate the Transport Corporation from payment of compensation amount. On the other hand, the learned counsel appearing for the respondent/Transport Corporation submitted that



the Tribunal has excessively awarded compensation under the heads of permanent disability, pain and sufferings, loss of income, loss of amenities and enjoyment, attendant expenses and loss of earning capacity and therefore, the same may be reduced. Thus, he prayed to reduce the award amount.

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4. The learned counsel appearing for the claimant/respondent submitted that the Tribunal has categorically found that the driver of the appellant/Transport Corporation alone has caused the accident based on Exs.P1 to P7 and therefore, this Court need not interfere with the said finding of the Tribunal. He would further submit that before the accident, the claimant was working as Receptionist cum Pharmacist in Grace Multi Speciality Hospital, Chennai and earning a sum of Rs.10,000/- p.m. and due to 61% disability sustained in the accident, the claimant lost her avocation, but the Tribunal, without adopting multiplier method, has awarded Rs.3,000/- per percentage of disability. This Court has enormous power to enhance the award amount even without the appeal for enhancement, in a case of this nature. Thus, he prayed to enhance the award amount.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. It is seen that on 13.05.2015, the Transport Corporation bus started its trip from Avadi to Shencottah. At 2.00 p.m., while the bus was moving towards Trichy to Madurai Main Road near Kovilpatti, a lorry which was loaded with Steel Rolling Rod, was moving in front of the bus. According to the claimant, due to rash and negligent driving of the driver of the Transport Corporation bus, the bus dashed the backside of the lorry, in which one person died and the claimant and other passengers sustained multiple injuries. According to the Transport Corporation, since the driver of the lorry has suddenly stopped the vehicle on the road, the accident has occurred. In Ex.P4 - Motor Vehicle Inspector Report, it is categorically stated that the accident was not occurred due to mechanical defect of the bus. The Tribunal has held that a perusal of Exs.P1 to P7 would show that the accident had occurred due to rash and negligent driving of the driver of the bus. Admittedly, there is no independent witness examined on the side of the Transport Corporation to substantiate their contention. The Transport Corporation has also not filed any documentary evidence in order to substantiate their contention. Merely because RW1 - driver of the Transport Corporation has stated in his evidence that the accident had occurred only due to sudden stoppage of the vehicle by the driver of the lorry, it cannot be concluded that the accident had not occurred due to rash and negligent driving of the driver of the bus. In view of the above, this Court does not find any reason to



interfere with the above finding of the Tribunal. Thus, the first contention of the Transport Corporation is rejected.

7. So far as the quantum of compensation is concerned, it is stated in the claim petition that at the time of the accident, the claimant was aged about 25 years and before the accident, she was working in Grace Multi Speciality Hospital, Chennai, as Receptionist and Pharmacist and earning Rs.10,000/- p.m. She has also produced Ex.P13 - Salary Certificate. But, no witness was examined substantiating the said document. Due to accident, the claimant has sustained fracture on shaft of femur left, shaft of Tibia left, right thigh posterior aspect and left knee anterior aspect and she underwent surgeries in which rod and screws were implanted over her left thigh bone. The Medical Board has assessed the disability of the claimant as 61%. PW1 has stated in her evidence that due to disability, she could not walk, stand and sit on floor, climb stair case or run. The Tribunal has fixed Rs.3,000/- per percentage of disability and awarded only Rs.1,83,000/- ($61 \times 3000 = 1,83,000$) as compensation under the head of permanent disability.

8. Though the Tribunal itself stated in paragraph No.16 of the award that the claimant has sustained grievous injuries, bone fractures and underwent three surgeries, due to which she could not continue her avocation, the Tribunal has erroneously awarded Rs.3,000/- per percentage of disability. Considering the fact that the claimant needed the help of others even for her day-to-day activities and considering the above error apparent on the face of the record and to avoid multiplicity of proceeding, this Court is inclined to enhance the compensation by adopting multiplier method. As per Ex.P13 - Salary Certificate, the claimant was earning Rs.8,000/- per month. Considering the fact that the claimant was earning the said sum by staying at Chennai and no one examined substantiating the salary certificate, this Court is inclined to notionally fix Rs.6,500/- as monthly income the claimant and accordingly, the annual income comes to Rs.78,000/-. According to the age of the claimant at the time of the accident, multiplier No.18 is adopted, as per the decision of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation**, reported in **2009 (2) TN MAC 1 (SC)**. Thus, the total loss of income due to disability comes to Rs.8,42,400/- ($78000 \times 18 \times 60/100 = 8,42,400$).

9. In view of the compensation of Rs.8,42,400/- now awarded under the head of "Loss of Income due to disability", the compensation awarded by the Tribunal under the heads of "Permanent partial disability and functional disability", "Loss of Income", "Loss of amenities and enjoyment, Loss of happiness and for mental agony" and "Loss of earning capacity" are hereby set aside. As



rightly stated by the learned counsel for the Transport Corporation, Rs.50,000/- awarded by the Tribunal under the head of "Attendant expenses" is on the higher side and hence, the same is reduced to Rs.5,000/-. In all other respects, the award passed by the Tribunal is confirmed. Thus, the total compensation comes as under:

Head of compensation	MCOP	CMA
Permanent partial disability and functional disability	Rs.1,83,000/-	Deleted
Pain and sufferings	Rs. 75,000/-	Rs. 75,000/-
Loss of income	Rs. 32,000/-	Deleted
Loss of amenities and enjoyment, loss of happiness and for mental agony	Rs.1,50,000/-	Deleted
Loss of earning capacity	Rs. 50,000/-	Deleted
Loss of income due to disability	(not awarded)	Rs.8,42,400/-
Nutritious food expenses	Rs. 50,000/-	Rs. 50,000/-
Medical expenses	Rs.5,61,528/-	Rs.5,61,528/-
Attendant expenses	Rs. 50,000/-	Rs. 5,000/-
Total	Rs.11,51,528/-	Rs.15,33,928/-

10. In view of the above, the quantum of awarded by the Tribunal is enhanced from Rs.11,51,528/- to Rs.15,33,928/-. The appellant / Transport Corporation is directed to deposit the entire award amount ie. Rs.15,33,928/-, less the amount already deposited, with accrued interest at the rate of 7.5% p.a. from the date of petition till the date of realization, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is entitled to withdraw the entire award amount with accrued interest and costs. The claimant is directed to pay the Court fee for the enhanced award amount within a period of four weeks from the date of receipt of the copy of the judgment.

11. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Srivilliputhur.

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Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.G.M.Law Office , Advocate SR.No.80810

+1 cc to Mr.P.Prabhakaran , Advocate SR.No.80488

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