

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1013 of 2013

S. Kasthuri

... Appellant/Petitioner

Versus

Metropolitan Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavan Salai,
Chennai - 2. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 18.10.2006 in MCOP No.618 of 2002 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai.

For Appellant : Ms.Ramya V. Rao

For Respondent : Mr.S.Sivakumar

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 18.10.2006 passed by the Motor Accidents Claims Tribunal (IV Court of Small causes, Chennai) in MCOP No.618 of 2002.

2. The appellant / claimant sustained injuries on 29.08.2001 as a result of an accident caused by a bus owned by the respondent / Transport Corporation. She preferred a claim under Section 163-A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal (IV Court of Small Causes, Chennai) seeking compensation of Rs.5,00,000/-

3. The Motor Accidents Claims Tribunal (IV Court of Small Causes, Chennai) by its award dated 18.10.2006 directed the respondent / Transport Corporation to pay the appellant / claimant a sum of Rs.91,091/- together with interests and costs.

4.The details of the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	3,000
Transport to Hospital	2,000
Extra Nourishment charges	2,000
Medical expenses as per Ex.P6	16,091
Mental Agony	3,000
Future medical expenses	2,000
Pain and suffering	8,000
Permanent disability	55,000
Total	91,091

5. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

6. Heard Ms. Ramya V. Rao, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent / Transport Corporation.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. According to the appellant, she was a fruit vendor and due to the injuries caused by a bus owned by the respondent / Transport corporation, she had sustained grade III B Open fracture of both bones in her left leg. It is also her case that due to formation of septic due to the injuries, the external fixator was removed from her leg. According to her, eventhough the Doctor had assessed the disability as per Ex.P9 at 60%, the Tribunal on its own without any basis has assessed the disability compensation at a meagre sum of Rs.55,000/- It is her case that for a long period of time, she was hospitalised due to the injuries sustained by her as a result of the accident. Hence, according to her, the compensation awarded by the Tribunal is too low and is not a just compensation and therefore it needs to be enhanced.

9. The adverse findings of negligence against the Driver of the bus, who caused the accident which resulted in injuries

sustained by the appellant / claimant has now attained finality, since no appeal has been filed by the respondent / Transport Corporation. The only question that arises for consideration in this appeal is whether the compensation awarded by the Tribunal to the appellant / claimant is a just compensation or not and whether the compensation needs to be enhanced.

10. Before the Tribunal, the appellant / claimant has filed ten documents, which were marked as Ex.P1 to Ex.P10 and two witnesses were examined viz, the appellant herself as PW1 and the Doctor, who examined her as PW2. On the side of the respondent / Transport Corporation, one witness was examined but no document was filed on their side.

11. The age and avocation of the appellant / claimant has not been disputed by the respondent / Transport Corporation as seen from the materials and evidence available on record before the Tribunal.

12. The nature of injuries sustained by the appellant / claimant as well as the period of her hospitalisation due to the said injuries have also not been disputed by the respondent/ Transport Corporation before the Tribunal. The discharge summary viz., Exs.P2, P4 and P5 issued by the hospital establishes that the appellant / claimant was hospitalised for almost 100 days during three different periods. This has also not been disputed by the respondent / Transport Corporation before the Tribunal. Only due to the fact that the appellant / claimant had suffered grievous injuries which required three surgeries to be performed on her, she was hospitalised for a long period of time as seen from Exs.P2, P4 and P5. The Tribunal has assessed the disability of the appellant/claimant at 55% even though the Doctor, who examined the appellant / claimant has assessed her disability at 60%, as seen from Ex.P9-Disability certificate. The Doctor who examined the appellant / claimant has also been examined as a witness (PW2). The appellant / claimant in her claim petition has claimed that as a fruit vendor, she was earning Rs.200/- per day, but the Tribunal under the impugned award has assessed the monthly income of the appellant / claimant at Rs.3,000/-p.m., since no documentary evidence was produced before the Tribunal to substantiate the contention of the claimant / appellant that she was earning Rs.200/- per day as a fruit vendor. The Tribunal has also awarded only Rs.3,000/- to the appellant / claimant as loss of income during the period of her treatment which was assessed based on one month notional salary. In the considered view of this Court the said assessment is not a reasonable and a just assessment. This Court after considering the nature of injuries sustained by the appellant / claimant and her long period of

hospitalisation for almost 100 days is of the opinion that the Tribunal ought to have awarded a higher compensation to the appellant / claimant towards loss of income. This Court is of the considered view that for atleast a period of 10 months, the appellant / claimant would have suffered loss of income due to her inability to carry on her regular trade as a fruit vendor. Accordingly, a sum of Rs.30,000/- is awarded as compensation to the appellant / claimant towards loss of income for a period of 10 months instead of Rs.3,000/- awarded by the Tribunal for a period of one month only.

13. Since, the claim has been filed under Section 163-A of the Motor Vehicles Act and the compensation will have to be awarded on structured formula basis, the appellant / claimant is not legally entitled to compensation under the heads Transportation, extra nourishment, mental agony and future medical expenses. However, the Tribunal erroneously has granted compensation under the said heads. Accordingly, this Court rejects the same and the same is set aside.

14. Since, the claim has been filed by the Appellant / Claimant under Section 163-A of the Motor Vehicles Act, the Tribunal ought to have awarded compensation for medical expenses only as per the Schedule II of the Motor Vehicles Act, which has a ceiling limit of Rs.15,000/-, but the Tribunal has erroneously taken into consideration Ex.P6 (medical bills) and has awarded a higher compensation of Rs.16,091/- to the appellant / claimant towards medical expenses. Accordingly, the medical expenses granted by the Tribunal is reduced by this Court to Rs.15,000/- from Rs.16,091/-. Under Schedule II of the Motor Vehicles Act, the maximum compensation that can be granted towards pain and suffering is only Rs.5,000/-, but the Tribunal has erroneously awarded Rs.8,000/- under the impugned award. Accordingly, the same is reduced to Rs.5,000/- from Rs.8,000/- by this Court.

15. A sum of Rs.8,000/- awarded under the head pain and suffering is on the higher side and hence, this Court reduces the same to Rs.5,000/- .

16. The appellant / claimant was aged 35 years running 36 at the time of accident. The multiplier to be applied under Schedule II of the Motor Vehicles Act is 17. Since no proof has been produced by the appellant / claimant to establish her age, this Court deems it fit that the multiplier to be applied has to be reduced from 17 to 16 to arrive at a just compensation for the permanent disability sustained by the appellant / claimant. The Tribunal taking into consideration, the disability certificate (Ex.P9), which reveals that the appellant / claimant

has suffered 60% functional disability has on its own fixed the disability at 55% and has awarded Rs.55,000/- as disability compensation calculated at Rs.1,000/- per percentage of disability. This Court is of the considered view that the nature of injuries sustained by the appellant / claimant are grievous in nature and due to her long period of hospitalisation, the Tribunal ought to have applied multiplier method as per Schedule II of the Motor Vehicles Act instead of assessing the disability compensation based on percentage basis. However, the whole body permanent disability after considering the nature of injuries sustained by the appellant is assessed at 30%. Accordingly, this Court applies the multiplier method as per Schedule II, and awards a disability compensation of Rs.1,72,800/- as detailed hereunder to the appellant / claimant ($\text{Rs.3000} \times 12 \times 16 \times 30/100 = 1,72,800/-$). Therefore, the disability compensation awarded to the appellant / claimant is enhanced from Rs.55,000/- to Rs.1,72,800/-.

17. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income * $\text{Rs.3,000} \times 1$ # $\text{Rs.3,000} \times 10$	3,000 *	30,000 #
Transport to Hospital	2,000	- Rejected
Extra Nourishment charges	2,000	- Rejected
Medical expenses as per Ex.P6	16,091	15,000
Mental Agony	3,000	- Rejected
Future medical expenses	2,000	- Rejected
Pain and suffering	8,000	5,000
Permanent disability ** Rs.1,000/- per percentage of disability x 55 ## $\text{Rs.3,000/-} \times 12 \times 16 \times 30\%$	55,000 **	1,72,800 ##
Total	91,091	2,22,800

18. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.91,091/- to Rs.2,22,800/- as indicated above. No costs.

19. The respondent / Transport Corporation is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.618 of 2002, on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes, Chennai), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The IV Judge,
(Motor Accidents Claims Tribunal)
IV Court of Small Causes, Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

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