

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1683 of 2011
and C.M.P.No.24948 of 2019

G.Shanthi .. Appellant/Claimants

Vs

State Express Transport Corporation Limited
(Tamil Nadu Division-I)
Represented by its Managing Director
Pallavan Salai, Chennai-2. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2008 made in M.C.O.P.No.868 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Ms.K.Vasanthamala
for Mr.UM.Ravichandran

For Respondent : Mr.K.Kathiresan

J U D G M E N T

सत्यमेव जयते

The matter is heard through "Video Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.01.2008 made in M.C.O.P.No.868 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.868 of 2002 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. She filed the said claim petition claiming a sum of

Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 08.11.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent/Transport Corporation to pay a sum of Rs.2,37,300/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal awarded a sum of Rs.2,37,300/- as compensation against the claim of Rs.7,00,000/-. The appellant was working as a tailor and was earning a sum of Rs.150/- per day. Due to the injuries, she could not continue her tailoring work. A sum of Rs.25,000/- awarded by the Tribunal towards loss of earning power is meagre. The Tribunal ought to have adopted multiplier method while awarding compensation towards loss of earning power. The Tribunal ought to have awarded compensation towards loss of amenities, discomfort, frustration and mental stress. The amounts awarded by the Tribunal towards extra nourishment, permanent disability and mental agony are meagre and prayed for enhancement of compensation.

6.The appellant has filed C.M.P.No.24948 of 2019 to receive the medical records issued by Saveetha Medical College Hospital and MIOT International Hospital as additional documents. The learned counsel appearing for the appellant submitted that even in the year 2018, the appellant was having pain in her low back, she was admitted in Saveetha Medical College Hospital, she has taken treatment as in-patient from 08.07.2018 to 25.07.2018 and has also taken treatment in MIOT International Hospital from 25.07.2018 to 03.08.2018 and sought for permission to file the additional documents.

7.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal considering the evidence of P.W.3 and P.W.4/Doctors with regard to disability suffered by the appellant, accepted the disability certificate and awarded a sum of Rs.75,000/- towards 75% disability and also awarded a sum of Rs.25,000/- separately towards loss of earning power. In view of the same, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal considering the nature of injuries and period of treatment, has awarded compensation under different

heads, which are not meagre. The appellant has not produced any document to show that she was taking treatment after discharged from the hospital in the year 2002. The documents now sought to be filed as additional documents relate to the year 2018. The appellant has not proved that the treatment taken in the year 2018 is due to the injuries sustained by her in the accident took place on 08.11.2001. Hence, she is not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the entire materials on record.

9. It is the contention of the appellant that in the accident, she sustained injuries on spine, loss of one lower tooth, three lower teeth shaky, injuries on the right and left hand, leg and multiple injuries all over the body. The appellant has taken treatment in the hospital as in-patient for 24 days in four spells. The appellant has marked O.P. chit as Ex.P3 and four discharge summaries as Exs.P4 to P7. The appellant examined P.W.3 and P.W.4/Doctors, who deposed about the nature of injuries, treatment taken by the appellant and assessed the disability suffered by the appellant as 55% and 20% respectively, totally 75% disability. The respondent/Transport Corporation did not let in any contra evidence. The Tribunal considering the evidence of the appellant as P.W.1, P.W.3 and P.W.4/Doctors, accepted the disability certificates issued by P.W.3 and P.W.4/Doctors and awarded a sum of Rs.75,000/- towards disability. The appellant contended that she was working as a tailor and due to the injuries, she could not continue her work as a tailor. The said contention is based on the evidence on record. The Tribunal instead of awarding compensation by adopting multiplier method awarded a sum of Rs.25,000/- towards loss of earning power. Considering the nature of work done by the appellant, injuries and disability suffered by the appellant, the compensation so awarded by the Tribunal is set aside and the appellant is entitled to compensation by adopting multiplier method. The Tribunal fixed the notional income of the appellant as Rs.4,500/- per month. The accident is of the year 2001 and the notional income fixed by the Tribunal is not meagre. The appellant was aged 31 years at the time of accident. The multiplier applicable is 16. P.W.3 and P.W.4/Doctors have not assessed the disability for whole body. Therefore, the disability for the whole body is fixed at 30%. Thus, the compensation awarded by the Tribunal towards loss of earning power is modified to Rs.2,59,200/- (Rs.4,500/- X 12 X 16 X

30/100). Considering the facts of the present case, it will be just and proper to award compensation towards disability and loss of earning power separately. A sum of Rs.27,000/- awarded by the Tribunal towards loss of income is set aside.

9(i) The appellant has contended that she took treatment in the hospital as in-patient for 24 days on four spells and to prove the same, she marked four discharge summaries as Exs.P4 to P7. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.15,000/- is awarded towards attendant charges. A sum of Rs.1,000/- awarded by the Tribunal towards extra nourishment is meagre and hence, the same is hereby enhanced to Rs.7,500/-. The appellant has produced documents to show that she has again taken treatment as in-patient in Saveetha Medical College Hospital and MIOT International Hospital in the year 2018. The appellant has not produced any document to show that she has spent amount towards medical treatment and no such claim is made in the affidavit filed in support of C.M.P.No.24948 of 2019. Hence, the appellant is not entitled to any further amount towards medical expenses. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	27,000	-	Set aside
2.	Transportation	21,000	21,000	Confirmed
3.	Extra nourishment	1,000	7,500	Enhanced
4.	Medical expenses	73,277.40	73,277.40	Confirmed
5.	Mental agony	5,000	5,000	Confirmed
6.	Pain and suffering	10,000	10,000	Confirmed
7.	Disability	75,000	75,000	Confirmed

8.	Loss of earning power	25,000	2,59,200	Enhanced
9.	Attendant charges	-	15,000	Granted
	Total	2,37,277.40 rounded off to 2,37,300	4,65,977.40 rounded off to 4,66,000	Enhanced by Rs.2,28,700 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,37,300/- is hereby enhanced to Rs.4,66,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected C.M.P.No.24948 of 2019 is closed.

Sd/-
Asst.Registrar (CS VIII)
/true copy/
Sub Asst. Registrar

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To

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

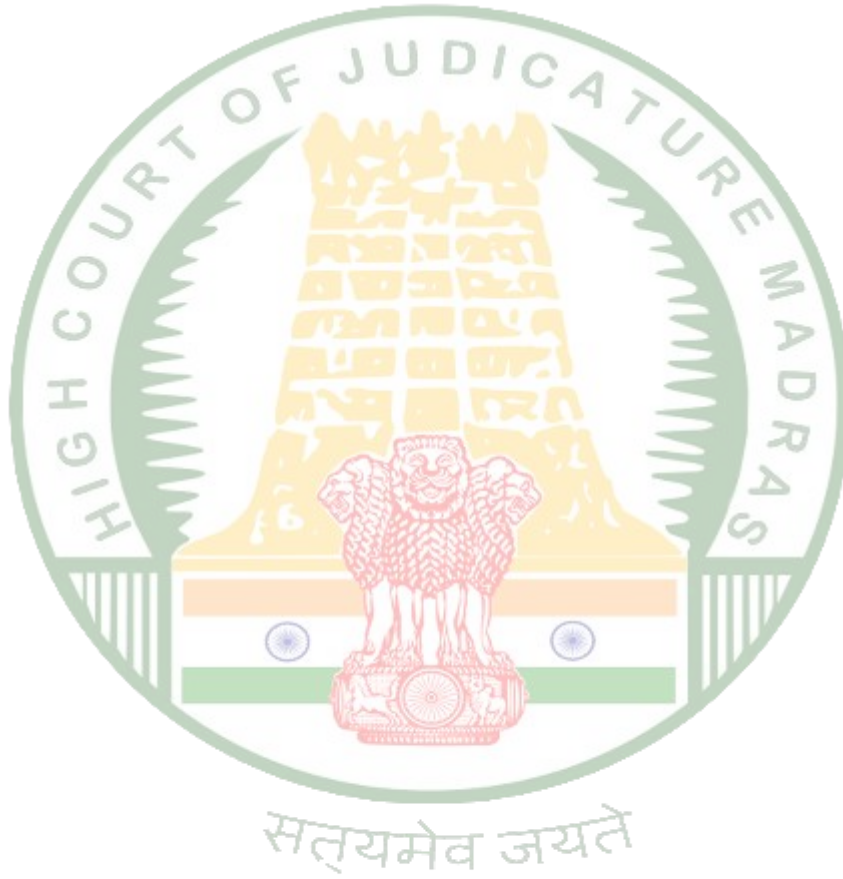
2.The Section Officer
V.R.Section
High Court, Chennai.

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+1 cc to Mr.K.Kathiresan Advocate sr33053
+1 cc to Mr.U.M.Ravichandran Advocate sr33228

C.M.A.No.1683 of 2011

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