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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1773 of 2013

A.Sukirthiny @ Suba

.. Appellant/Petitioner

Vs

State Express Transport Corporation Limited
Represented by its Managing Director
Chennai-1.

.. /Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2011 made in M.C.O.P.No.4410 of 2008 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondent : Mr.K.Kathiresan

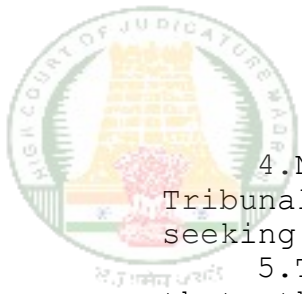
J U D G M E N T

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 17.06.2011 made in M.C.O.P.No.4410 of 2008 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4410 of 2008 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. She filed the said claim petition claiming a sum of Rs.27,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.09.2008.

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.17,70,500/- as compensation to the appellant.



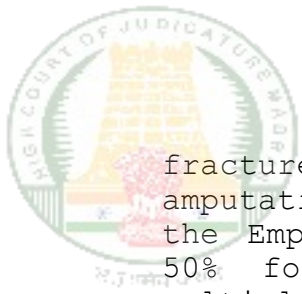
4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of the appellant as P.W.4 and evidence of Doctor as P.W.5 properly and has awarded only a sum of Rs.17,70,500/- as compensation as against the total claim of Rs.27,00,000/-. The Tribunal failed to consider the nature of injuries, fracture of both bones in the right leg, amputation of left leg below the knee and treatment taken by the appellant as in-patient in three different hospitals. The appellant is walking with artificial leg. The Tribunal ought to have granted more compensation for 35% permanent disability. The appellant was a tailor and was earning a sum of Rs.10,000/- per month. To prove the avocation and income, the appellant has filed Ex.P31/salary certificate. The Tribunal failed to consider the same and erroneously fixed a meagre sum of Rs.6,000/- as monthly income of the appellant and awarded a sum of Rs.54,000/- towards loss of income for a period of nine months. The appellant was aged 21 years at the time of accident. The Tribunal erred in applying multiplier '17' instead of '18'. The appellant has taken treatment in three different hospitals and even after discharge from the hospital, has taken treatment as out-patient. The Tribunal ought to have awarded more compensation towards transportation, extra nourishment and damage to clothes and articles. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal has separately awarded compensation towards loss of income and loss of earning capacity, which are excessive. Therefore, the appellant is not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

7. 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 available on record.

8. From the materials available on record, it is seen that it is the contention of the appellant that in the accident, she sustained fracture in right leg and surgery was conducted. Due to the injuries, her left leg below knee was amputated. The appellant as P.W.4 deposed about the same. She also examined the Doctor as P.W.5, who deposed about the nature of injuries, treatment taken and amputation of left leg below knee. P.W.5/Doctor has also deposed that the appellant is walking with artificial leg and having pain in the right leg. P.W.5/Doctor examined the appellant and certified that appellant suffered 50% disability for amputation of left leg below knee and 35% for

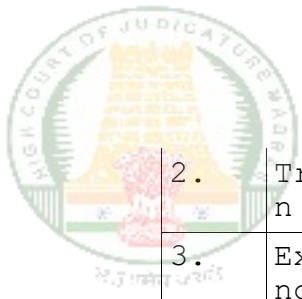


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fracture in the right leg. The Tribunal has held that the amputation of left leg below knee is a schedule injury as per the Employees Compensation Act and as per the Schedule, fixed 50% for the amputation of left leg below knee, adopted multiplier method and granted a sum of Rs.6,12,000/- towards loss of earning capacity. In addition to the amount granted for 50% disability by adopting multiplier method, the Tribunal has also awarded a sum of Rs.70,000/- towards 35% for partial permanent disability by adopting percentage method. The appellant claimed that she was working as a tailor and was earning a sum of Rs.10,000/- per month and marked Ex.P31/salary certificate to show that she was earning a sum of Rs.15,000/- per month. The Tribunal did not accept the same, as the same was not proved by examining the author of the document and fixed a sum of Rs.6,000/- per month as notional income of the appellant. The Tribunal in addition to the amounts awarded separately towards loss of earning power by adopting multiplier method and for 35% disability by adopting percentage method, awarded a sum of Rs.54,000/- towards loss of income during treatment period. Further, the Tribunal has awarded a sum of Rs.1,00,000/- and Rs.50,000/- towards pain and suffering and extra nourishment in addition to the amount granted towards medical expenses, which are excessive. In view of the excess amounts awarded by the Tribunal towards loss of earning power, loss of income during treatment period and disability separately, multiplier '17' applied by the Tribunal instead of '18' is not interfered with and the appellant is not entitled to any enhancement of compensation under different heads.

8(i) According to the appellant, she has taken treatment as in-patient in Parvathy Hospital, on 17.09.2008 and 18.09.2008, then she has taken treatment in Apollo First Med Hospital from 18.09.2008 to 06.10.2008 and then in MIOT Hospital from 08.10.2008 to 04.11.2008 on three different spells for more than 45 days. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, a sum of Rs.20,000/- each is awarded towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under all other heads are 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	54,000	54,000	Confirmed



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2.	Transportation	10,000	10,000	Confirmed
3.	Extra nourishment	50,000	50,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	8,73,500	8,73,500	Confirmed
6.	Pain and suffering	1,00,000	1,00,000	Confirmed
7.	Permanent disability	70,000	70,000	Confirmed
8.	Loss of earning power	6,12,000	6,12,000	Confirmed
9.	Attendant charges	-	20,000	Granted
10.	Loss of amenities	-	20,000	Granted
	Total	17,70,500	18,10,500	Enhanced by Rs.40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,70,500/- is hereby enhanced to Rs.18,10,500/- 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.

Sd/-

Assistant Registrar(CS VIII)
dt 23/02/2021

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Sub Assistant 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.

+1cc to Ms.M.Malar, Advocate, S.R.No.35688

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.35698

C.M.A.No.1773 of 2013

MG(CO)
HS(13/08/2021)