

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2039 of 2012

D. Yasodha

.... Appellant /Claimant

Versus

Metropolitan Transport Corporation Ltd.

Anna Salai,

Chennai - 600 002

Rep. by its the Managing DirectorRespondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.10.2010 made in M.A.C.T.O.P. No.1371 of 2007 on the file of IV Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthuvisakan

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 award dated 05.10.2010 passed by the Motor Accidents Claims Tribunal (IV Court of Small causes, Chennai) in MCOP No.1371 of 2007.

2. The appellant / claimant sustained injuries on 23.02.2007 as a result of an accident caused by a bus owned by the respondent / Transport Corporation. She preferred a claim before the Motor Accidents Claims Tribunal (IV Court of Small Causes, Chennai) seeking compensation of Rs.8,00,000/-, which was restricted to Rs.7,00,000/- for the injuries sustained by her, as a result of the accident.

3. The Tribunal by its award dated 05.10.2010 directed the respondent / Transport Corporation to pay the appellant / claimant a sum of Rs.2,75,800/- 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	13,500
Transport to Hospital	2,000
Extra nourishment	3,000
Damage to clothing	1,000
Medical expenses	1,71,300
Pain and sufferings	10,000
Permanent disability	75,000
Total	2,75,800

5. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking enhancement.

6. Heard Mr.Mr.K.V.Muthuvisakan, 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. Before the Tribunal, the appellant / claimant has filed ten documents, which were marked as Ex.P1 to Ex.P10 and three witnesses were examined viz., on her side viz., the appellant / claimant herself as PW2 as well as her Doctor viz., Dr.Saichandran as PW3. On the side of the respondent / Transport Corporation, one witness was examined viz., Varadharajan, the Driver of the bus belonging to the respondent Transport Corporation as RW1, but no document was filed on their side.

9. The findings of the Tribunal as regards the negligence of the Driver of the bus has now attained finality, since no appeal has been filed by the respondent / Transport Corporation as against the said findings. The only question that has to be

decided by this Court is whether the compensation assessed by the Tribunal in favour of the claimant is a just compensation or not and whether any enhancement will have to be granted to the appellant / claimant. The appellant / claimant suffered L1 vertebra fracture with cauda equina syndrome. Surgery was done on her on 25.02.2007. Laminectomy L1 and decompression of spine, spinal stablization D12 -L2 biopsy of 11 vertebral body was also performed on her. Ex.P6, Discharge summary reveals that the appellant / claimant had taken treatment as an inpatient at Apollo Speciality Hospital from 24.02.2007 to 05.03.2007. The Doctor (PW3), who examined her has also issued a Disability Certificate which was marked as Ex.P8, which reveals that the appellant / claimant had suffered 60% disability as a result of the accident. However, the Tribunal has reduced the disability to 50% and has awarded Rs.75,000/- as compensation towards her disability calculated at the rate of Rs.1,500/- per percentage of disability. The appellant / claimant in her claim petition has claimed that she was a Tailor at the time of the accident. Considering the fact that the appellant / claimant has sustained spinal injuries, which are grievous in nature as revealed through Ex.P6-Discharge summary and Ex.P8-Disability Certificate, the disability compensation awarded by the Tribunal at Rs.75,000/- is low in the considered view of this Court. The year of the accident is 2007 and after considering all the aforementioned factors, this Court is of the considered view that a sum of Rs.1,00,000/- will be a just compensation towards 50% disability suffered by the appellant / claimant calculated at Rs.2,000/- per percentage of disability instead of Rs.1,500/- per percentage of disability as calculated by the Tribunal.

10. The compensation awarded by the Tribunal towards loss of income at Rs.13,500/- calculated for a period of three months is also low. The monthly income was fixed by the Tribunal at Rs.4,500/-. Considering the nature of injuries sustained by the appellant / claimant, the loss of earning has taken for a period of eight months. Accordingly, compensation towards loss of earning is enhanced by this Court from Rs.13,500/- to Rs.36,000/- (4500 x 8 months).

11. The Tribunal has also awarded only a sum of Rs.2,000/- as transportation expenses. Considering the long period of hospitalisation, the appellant /claimant would have certainly incurred much more expenditure towards transportation. Accordingly the transportation expenses is enhanced from Rs.2,000/- to Rs.10,000/-. Similarly, the Tribunal ought to have awarded higher compensation towards extra nourishment and pain and suffering. Accordingly, towards extra nourishment it

is enhanced from Rs.3,000/- to Rs.10,000/- and towards pain and suffering it is enhanced from 10,000/- to Rs.35,000/- and for permanent disability from Rs.75,000/- to Rs.1,00,000/- by this Court.

12. The Tribunal has also failed to award any compensation towards Attender Charges, considering the grievous spinal injuries sustained by the appellant / claimant. Accordingly, this Court awards Rs.10,000/- as compensation towards Attender charges. The Tribunal has also failed to award any compensation towards future medical expenses and loss of amenities to the appellant / claimant, which she is legally entitled to in view of the nature of injuries sustained by her. Accordingly, this Court awards Rs.15,000/- as compensation towards future medical expenses and another sum of Rs.15,000/- towards loss of amenities.

13. Insofar as the compensation awarded by the Tribunal under the heads a) damage to dress materials at Rs.1,000/- and b) Cost of treatment and purchase of medicines are concerned, this Court confirms the assessment of the Tribunal under those heads.

14. The Tribunal has rightly rejected the claim for compensation for loss of earning power, since the appellant / claimant has not produced any documentary evidence. The said finding is confirmed by this Court.

15. 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 *Rs.4,500/- x 3 months #Rs.4,500 x 8 months	13,500*	36000 #
Transport to Hospital	2,000	10000
Extra nourishment	3,000	10000
Damage to clothing	1,000	1,000
Medical expenses	1,71,300	1,71,300
Pain and sufferings	10,000	35000
Permanent disability	75,000	1,00,000
Attender charges	-	10,000
Future medical expenditure	-	15,000
Loss of amenities	-	15,000
Total	2,75,800	4,03,300

16. In the result, this appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,75,800/- to Rs.4,03,300/- as indicated above. No costs.

17. 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.1371 of 2007, 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 required Court fee, if any has to be paid by the appellant before receiving the copy of this Judgment.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

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

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