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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.2864 of 2013

R.Prema

.. 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.4409 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.4409 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.4409 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.18,00,000/- 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.11,45,400/- as compensation to the appellant.



8. From the materials available on record, it is seen that in the accident, the appellant has sustained injuries, bones in the left leg were cut into pieces. The appellant has taken treatment as in-patient in five different spells for more than 80 days and underwent surgeries. The appellant produced Exs.P5, P6, P12 and P15/Discharge summaries, Ex.P37/Disability certificate and Exs.P7, P8, P13 and P14/Medical bills to prove the nature of injuries, treatment taken and expenses incurred by her. P.W.5/Doctor deposed about the nature of injuries and certified that the appellant suffered 75% disability. The

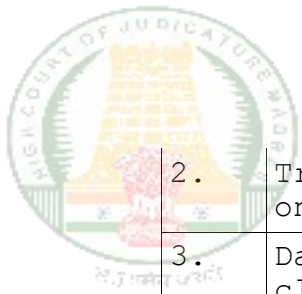


Tribunal reduced the percentage of disability to 70% on the ground that the assessment of disability may vary from Doctor to Doctor. The respondent has not let in any contra evidence to the evidence of P.W.5/Doctor. In view of the same, the appellant is entitled to compensation for 75% disability. The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal has granted compensation at the rate of Rs.2,000/- per percentage of disability and the same is proper. Thus, the appellant is entitled to a sum of Rs.1,50,000/- (Rs.2,000/- X 75%) towards disability.

8(i).The appellant has claimed that she was working as a tailor and was earning a sum of Rs.10,000/- per month. The Tribunal has awarded a sum of Rs.36,000/- towards loss of income for eight months during treatment period by fixing a sum of Rs.4,500/- as monthly income of the appellant. The accident has occurred in the year 2008 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,500/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended the work atleast for a period of ten months. Hence, a sum of Rs.65,000/- (Rs.6,500/- x 10) is awarded towards loss of income for a period of ten months.

8(ii).According to the appellant, she has taken treatment as in-patient in Parvathi Hospital on 17.09.2008 and 18.09.2008, in Apollo First Med Hospital from 19.09.2008 to 03.10.2008, in MIOT Hospital on three different spells from 03.10.2008 to 21.11.2008, 28.10.2009 to 04.11.2009 and 14.12.2010 to 24.12.2010 for more than 80 days. The Tribunal has not awarded any amount towards attendant charges, extra nourishment and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.20,000/- each is awarded towards attendant charges and extra nourishment and Rs.10,000/- is awarded towards loss of amenities. 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	36,000	65,000	Enhanced



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2.	Transportation	10,000	10,000	Confirmed
3.	Damage to clothes	1,000	1,000	Confirmed
4.	Medical expenses	8,98,400	8,98,400	Confirmed
5.	Pain and suffering	60,000	60,000	Confirmed
6.	Permanent disability	1,40,000	1,50,000	Enhanced
7.	Attendant charges	-	20,000	Granted
8.	Extra nourishment	-	20,000	Granted
9.	Loss of amenities	-	10,000	Granted
	Total	11,45,400	12,34,400	Enhanced by Rs.89,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,45,400/- is hereby enhanced to Rs.12,34,400/- 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.89,000/- enhanced by this Court as per the order of this Court dated 07.08.2013 made in M.P.No.1 of 2012 in C.M.A.SR.No.91659 of 2012. 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

//True Copy//

Sub Assistant Registrar

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To

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

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

+lcc to Mr.K.Kathiresan, Advocate, S.R.No.35699

+lcc to Ms.M.Malar, Advocate, S.R.No.35687

C.M.A.No.2864 of 2013

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