

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.312 of 2016

Mubarak Banu

.. Appellant/Claimant

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2013 made in M.C.O.P.No.1273 of 2010 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

Respondent : Mr.S.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.03.2013 made in M.C.O.P.No.1273 of 2010 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1273 of 2010 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. She filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 20.02.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus

belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation to pay a sum of Rs.2,14,000/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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/claimant contended that the appellant was aged 31 years at the time of accident and was earning a sum of Rs.11,000/- per month by working as a Technician in M.T.C. Ambattur, Chennai. She has sustained severe head injury, traumatic brain injury, intracerebral haemorrhage and SDH and SAH, C-Spine fracture and multiple injuries all over the body. The appellant took treatment as in-patient in Sundaram Medical Foundation Hospital, Chennai from 20.02.2010 to 08.03.2010 for a period of 16 days. P.W.2/Doctor assessed the disability of the appellant as 50% but the Tribunal reduced the same to 40%. The Tribunal has not awarded any compensation towards attendant charges. 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 after considering the materials available on record, has awarded compensation, which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

8. It is the contention of the appellant that she sustained traumatic brain injury, intra cerebral haemorrhage. Ex.P4/scan report shows that Edema around the contusions, subdural hematoma, medline shift and cerebral edema. The appellant has examined one Dr.M.Saravana Bavanantham as P.W.2, who has assessed the partial permanent disability of the appellant as 50% and marked Ex.P2/discharge summary, Ex.P4/scan report, Ex.P7/scan films, Ex.P8/scan report and Ex.P9/disability certificate to prove the injuries and disability sustained by the appellant. The Tribunal reduced the disability to 40% holding that the percentage of disability assessed by PW2/doctor is on the higher side and awarded a sum of Rs.80,000/- (40% x Rs.2,000/-) towards disability at the rate of Rs.2,000/- per percentage of

disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. Hence, the appellant is entitled to compensation for 50% towards disability at the rate of Rs.2,000/- per percentage. Thus, a sum of Rs.1,00,000/- (50% x Rs.2,000/-) is awarded towards disability.

9. According to the appellant, she was aged 31 years at the time of accident and was earning a sum of Rs.11,000/- per month by working as a Technician in M.T.C. Ambattur, Chennai. The appellant has marked Ex.P5/Identity Card and Ex.P6/salary slip to prove her avocation and income. As per Ex.P6/salary slip for the month of February 2010, the gross income of the appellant is mentioned as Rs.11,335/-. As per Ex.P2/discharge summary, she has taken treatment as in-patient in Sundaram Medical Foundation Hospital, Chennai from 20.02.2010 to 08.03.2010 for a period of 16 days. Hence, it is clear that she lost her income. The Tribunal accepted Ex.P6/salary slip and awarded two months salary of Rs.23,000/- toward loss of income. The amount awarded by the Tribunal towards extra nourishment is meagre and hence the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- each are awarded towards attendant charges and loss of amenities respectively. 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
1.	Loss of income	23,000	23,000	Confirmed
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Damages to clothes	1,000	1,000	Confirmed
5.	Medical expenses	90,000	90,000	Confirmed
6.	Pain and sufferings	10,000	10,000	Confirmed

7.	Disability	80,000	1,00,000	Enhanced
8.	Attendant charges	-	10,000	Granted
9.	Loss of amenities	-	10,000	Granted
	Total	Rs.2,14,000/-	Rs.2,59,000	Enhanced by Rs.45,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,14,000/- is hereby enhanced to Rs.2,59,000/- 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/claimant 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-VI)

//True Copy//

Sub Assistant Registrar

mtl
To

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

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

+lcc to Mr.K.V.Muthuvisakan, Advocate, S.R.No.10347
+lcc to Mr.S.Sivakumar, Advocate, S.R.No.10947

C.M.A.No.312 of 2016

VBA(CO)
CB(01/09/2020)