

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.520 of 2016

S.Sumathi

...Appellant/Claimant

/versus/

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

...Respondent/Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment made in M.C.O.P.No.3571 of 2011 dated 23.09.2013 on the file of the IV Judge, Small Cause Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran
for Mr.A.Shanmugaraj

For Respondent : Dr.S.S.Swaminathan

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. This appeal is filed by the claimant who sustained injury in the road accident seeking for enhancement of compensation.

3. According to the claimant while she was travelling as pillion rider in the motorcycle bearing registration No.TN 18 C 7817 along the Jawaharlal Nehru road, the passenger bus owned by the respondent Transport Corporation dashed against her and caused grievous injury. In the said accident the claimant has sustained fracture of right ankle, fracture of right foot and multiple injuries all over her body. At the time of accident,

she was employed as a Nurse in a hospital at Bangalore drawing salary of Rs.5419/- per month. The injury has caused her disability and spoiled her prospects of marriage, hence she has sought compensation of Rs.5,00,000/-.

4. Before the Tribunal she has been examined as a witness along with two other witnesses for the petitioner. 26 exhibits were marked in support of the claim petition.

5. PW.3 Doctor Thiyagarajan has given the disability certificate. According to the certificate she has sustained 55% disability. She has also produced a certificate given by the Disability Officer for the purpose of obtaining pass. The certificate says she has sustained 60% disability. However, the Tribunal on considering the nature of injury has fixed disability as 45% and awarded Rs.90,000/- (2000x45) towards disability and Rs.1,34,535/- under the other heads of loss. Totally Rs.2,24,550/- with 7.5% interest.

6. The learned counsel appearing for the appellant would submit that there is evidence to show that due to the injury the claimant has lost her earning capacity. Before accident, she was working as Nurse and after the accident since she could not stand for hours together. She was found unfit to discharge the duty as Nurse. This has been spoken by the doctor PW.3 and therefore would submit that multiplier should be applied in this case to assess loss of earning capacity. Under the other heads also the compensation awarded is inadequate, so should be enhanced.

7. Per contra, the learned counsel appearing for the Transport Corporation would point out that the injury sustained by the claimant is not a scheduled injury where the multiplier could be applied. The nature of injury will not hamper her working capacity or earning capacity. The injury is near the ankle and after treatment and plastering almost normalcy restored except disfigurement and restricted movement. The Tribunal has rightly assessed the disability at 45% and awarded Rs.90,000/-. Therefore, the learned counsel would submit that there is no need to interfere.

8. The perusal of the pleadings, deposition and the scrutiny of the exhibits indicates that the claimant was working as Nurse in a hospital at Bangalore earning Rs.5419/- per month. She has met with an accident at Chennai and got injured. The injury as per the doctor's evidence is a malunited fracture of the foot and disfigurement. The Tribunal has taken the disability as 45% taking into consideration the fracture of 5th metatarsel, crush injury heel pad avulsion and dorsum avulsion. Hence, this Court finds that the determination of disability percentage is appropriate and needs no interference. However the

compensation shall be work out at the rate of Rs.3000 per percentage and the award is enhanced from Rs.90,000/- to Rs.1,35,000/- (3000x45). Beside additional compensation for attender charges and loss of earning during the period of treatment is awarded and loss of marriage prospects is awarded.

On such enhancement, the award of the Tribunal is modified. The award shall stands as:

Loss of earning during the treatment period	Rs.18,000/- (6000x3)
Transport to hospital	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-
Loss of marital prospects	Rs.25,000/-
Medical expense	Rs.78,538/-
Pain and sufferings	Rs.30,000/-
Attender charge	Rs. 6,000/- (2000x3)
Disability	Rs.1,35,000/- (3000x45)
Loss of amenities	Rs.10,000/-
Total	Rs.3,12,538/-

9. After modification, the compensation awarded for the claimant stands enhanced from Rs.2,24,538/- to Rs.3,12,538/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The award amount shall be deposited within a period of twelve weeks from the date of receipt of copy of this order.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

Sd/
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

The IV Judge, Small Causs Court,
(Motor Accident Claims Tribunal),
Chennai.

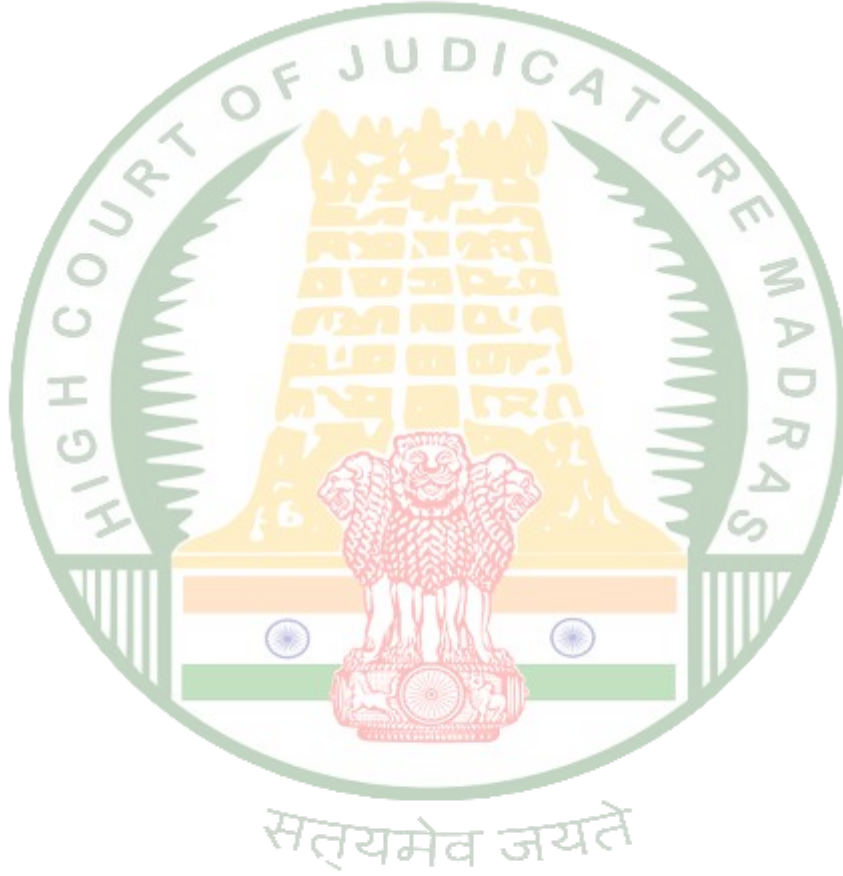
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The Section Officer,
VR Section, High Court, Madras.

+1cc to Dr.S.S.Swaminathan, Advocate SR.No.28891

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SSI (CO)
GMY (28/04/2021)



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