

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.861 of 2016

Gowri @ Bharati

... Appellant /Petitioners

Vs

The Managing Director

Tamil Nadu State Transport Corporation

Salem.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2015 made in M.A.C.T.O.P.No.2988 of 2012 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 10.04.2015 made in M.C.O.P.No.2988 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2988 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 09.11.2011.

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-Transport Corporation and directed the respondent to pay a sum of Rs.13,52,602/- 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.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained multiple fractures, including amputation of right leg and head injury

which lead to memory loss. She examined doctor as P.W.2 who deposed that the appellant suffered 65% disability for amputation of right leg and 20% disability for head injury, totalling to 85%. The Tribunal reduced the percentage of disability to 30% without giving any valid reason. The Tribunal having fixed Rs.2,000/- per percentage towards disability, calculated the compensation granted towards disability at the rate of Rs.1,800/- per percentage of disability. The appellant was working as a Nurse and was earning a sum of Rs.45,000/- per month. The Tribunal fixed only a meagre sum of Rs.4,000/- per month as notional income. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent contended that P.W.2-Doctor assessed that the appellant suffered 20% disability towards head injury but the Tribunal erroneously fixed 30% disability and awarded excessive compensation. In addition to that, the Tribunal has granted compensation towards 50% permanent disability by applying multiplier method, loss of earnings and loss of expectation of life. The amounts awarded by the Tribunal towards pain and suffering and loss of amenities are excessive. 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 the learned counsel appearing for the respondent and perused the materials available on record.

8. From the award passed by the Tribunal, it is seen that the appellant has suffered head injury as well as amputation of right leg. P.W.2-Doctor assessed that the appellant suffered 20% disability towards head injury and 60% disability for amputation of right leg. The Tribunal erroneously fixed 30% disability and granted a sum of Rs.54,000/- (30% x Rs.1,800/-) towards disability. Considering the disability assessed by P.W.2-Doctor, the amounts awarded by the Tribunal towards disability is modified and this Court awards a sum of Rs.60,000/- (Rs.3,000/- x 20%) at the rate of Rs.3,000/- per percentage for 20% disability suffered by the appellant. It is the contention of the appellant that she was working as a Nurse and was earning a sum of Rs.45,000/- per month, but she has failed to prove the same. In the absence of any material evidence to prove her avocation and income, the Tribunal fixed a meagre sum of Rs.4,000/- per month as notional income of the appellant. The accident is of the year 2011. Considering the year of the accident and the nature of work done by the appellant, this Court fixes a sum of Rs.6,500/- per month as notional income of

the appellant. The Tribunal considering the evidence of P.W.2-Doctor and nature of injuries suffered by the appellant, has fixed the percentage of permanent disability suffered by the appellant as 50%, which is proper. The Tribunal having fixed the age of the appellant as 65, erroneously applied the multiplier '5', instead of '7'. Hence, applying the correct multiplier, the amount awarded by the Tribunal towards permanent disability is modified to Rs.2,73,000/- (Rs.6,500 x 12 x 7 x 50/100). In view of the amount granted by the Tribunal towards permanent disability and disability separately, the amounts awarded by the Tribunal towards loss of earnings and loss of expectation of life are set aside. The appellant has not proved that she requires future medical treatment and hence, she is not entitled for compensation towards future medical expenses. The compensation awarded by the Tribunal under 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 earning	25,000/-	-	Set aside
2.	Transportation	25,000/-	25,000/-	Confirmed
3.	Extra Nourishment	20,000/-	20,000/-	Confirmed
4.	Damages to Clothing	500/-	500/-	Confirmed
5.	Medical Expenses	9,83,102/-	9,83,102/-	Confirmed
6.	Attender Charges	15,000/-	15,000/-	Confirmed
7.	Loss of amenities	25,000/-	25,000/-	Confirmed
8.	Loss of expectation of life	10,000/-	-	Set aside
9.	Pain and suffering	75,000/-	75,000/-	Confirmed
10.	Permanent disability	1,20,000/-	2,73,000/-	Enhanced
11.	Disability at 30%	54,000/-	60,000/-	enhanced
	Total	Rs.13,52,602/-	Rs.14,76,602	Enhanced by Rs.1,24,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,52,602/- is hereby enhanced to Rs.14,76,602/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, by filing necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section, High Court,
Chennai.

+1cc M/s.F.Terry Chellaraja, Advocate Sr.16763
+1cc to Mr.D.Venkatachalam, Advocate Sr.15775

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