

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.15 of 2014

Easwari

.. Appellant/Petitioner

vs.

1.Sampath Kumar

2.Metropolitan Transport Corporation

(Chennai Division) Limited,

Rep. by its Managing Director,

Pallavan Salai,

Chennai - 600 002.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2012 made in M.C.O.P.No.4421 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional Judge, Chennai.

For Appellant : Mr.N.M.Muthurajan

For respondents : Mr.K.Varadha Kamaraj for R1
Mr.K.Moorthy for R2

J U D G M E N T

The appellant is the claimant in MCOP.No.4421 of 2010 on the file of the Motor Accident Claims Tribunal / XVII Additional Judge, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules praying to award compensation of Rs.12,00,000/- for the injuries sustained by her in a road accident that took place on 19.08.2010.

2. The case of the appellant / claimant is that on 19.08.2010, at about 08.30 hours, when she was travelling as a pillion rider in motorcycle bearing Registration No.TN 21 AL 6998 along Perumal Agaram road, Thiruverkadu, Velappanchavadi, a

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van bearing Registration No. TN 22 J 7312 came in the opposite direction, in a rash and negligent manner and hit the motorcycle, as a result of which, she sustained injuries all over her body. The specific contention of the claimant is that the accident took place due to the rash and negligent driving of the driver of the said van. Therefore, she filed claim petition seeking compensation for the injuries sustained by her.

3. The learned XVII Additional Judge, Chennai vide decree and Judgment dated 31.10.2012, awarded compensation of Rs.1,57,000/- together with interest at the rate of 7.5% per annum to the claimant. Challenging the said award, the claimant has come out with the present appeal, seeking enhancement of compensation.

4. The learned counsel appearing for the appellant / claimant would contend that Dr.Tr.K.J.Mathiazhagan (PW2) doctor has assessed the partial permanent disability at 65% and the Tribunal without stating any reason reduced it to 50% and awarded a meager amount of Rs.1,00,000/- for the disability. He would further submit that the appellant / claimant was only 19 years old on the date of the accident, working as a Computer Executive earning a sum of Rs.8,000/- per month. However, the Tribunal fixed notional income at Rs.6,000/- and awarded Rs.24,000/- for loss of income for four months, which is meagre. He also submitted that due to the said accident, she has sustained fracture in her finger and it would surely affect her earning capacity. He therefore prayed for enhancing the compensation under other heads.

5. The learned counsel appearing for the second respondent would submit that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and respondents and perused the materials available on record.

7. From the materials available on record, it is seen that Dr.Tr.K.J.Mathiazhagan (PW2) had deposed that the appellant had suffered compound comminuted fracture of right femur at two levels, fracture in right knee, compound fracture of right hand, right finger, avulsion injury over right hand dorsal surface. The Doctor has further deposed that the movement of knee is restricted and the appellant is not able to lift heavy objects and assessed the total disability at 65%. However, the Tribunal

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reduced the same to 50% and awarded Rs.1,00,000/- towards disability (Rs.2,000/- per percentage of disability). Since the appellant has sustained many number of fractures, this Court is inclined to fix the disability at 60% and since the accident is of the year 2010, Rs.3,000/- per percentage of disability is fixed. Therefore, Rs.1,80,000/- is awarded for disability. Considering all the fractures sustained by the appellant, the sum of Rs.25,000/- awarded for pain and sufferings is enhanced to Rs.30,000/-. It is contended that she is aged 19 years on the date of accident and was working as a Computer Executive, earning a sum of Rs.8,000/- per month. She had sustained fracture on right hand and finger and it would definitely affect her earning capacity. Therefore, Rs.10,000/- is awarded for loss of earning power. In the absence of material evidence, the Tribunal fixed the notional monthly income as Rs.6,000/- and the same is confirmed, however, considering the nature of injuries, she would not have attended work atleast for eight months and so, Rs.48,000/- (Rs.6,000/- x 8) is awarded for loss of income. Taking into consideration the age of the appellant, this Court is inclined to award Rs.20,000/- for mental agony and Rs.10,000/- for her loss of future life. The Tribunal has not awarded any amount for attender's charges. From the discharge summary (Ex.P2), it is seen that she was admitted as an inpatient in the Government Stanley Hospital on 19.08.2010 and discharged on 11.10.2010 and a surgery was also performed on her on 24.09.2010. Under these circumstances Rs.10,000/- is awarded towards the attender's charges and Rs.3,000/- awarded for transportation is hereby enhanced to Rs.5,000/-. The compensation awarded for extra nourishment at Rs.5,000/- is 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)
1	For Disability	1,00,000	1,80,000
2	Pain and suffering	25,000	30,000
3	Nutrition	5,000	5,000
4	Transportation	3,000	5,000
5	Loss of income	24,000	48,000
6	Loss of earning power	-	10,000
7	Mental agony	-	20,000

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8	Loss of future life	-	10,000
9	Attender's charges	-	10,000
	Total	Rs.1,57,000/-	Rs.3,18,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,57,000/- is hereby enhanced to Rs.3,18,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The first and second respondents are directed to deposit the enhanced award amount now determined by this Court in the ratio 50 : 50 along with proportionate interest and costs, less the amount already deposited if any, to the credit of MCOP.No.4421 of 2010 on the file of the XVII Additional Judge / Motor Accident Claims Tribunal, Chennai within a period of six 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

//True Copy//

Sub Assistant Registrar

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To

1.The XVII Additional Judge,
Motor Accident Claims Tribunal, Chennai
Chennai.

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

+1cc to Mr.K.Moorthy, Advocate SR.7725
+2cc to Mr.N.M.Muthurajan, Advocate SR.7821

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