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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3477 of 2014
and M.P.No.1 of 2014

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.
No.3/137, Salamedu
Vazhuthareddy
Villupuram-605 602.

.. Appellant/1st Respondent

Vs

1.K.Ramani

..1st Respondent/Petitioner

2.V.Alagarsamy

3.The National Insurance Company Ltd.
Thallakulam Branch
Madurai.

.. Respondents 2 & 3/Respondents 2 & 3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2012 made in M.C.O.P.No.3687 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Chennai.

For Appellant : Mr.K.J.Sivakumar

For R1 : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation against the judgment and decree dated 21.03.2012 made in M.C.O.P.No.3687 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Chennai.



2.The appellant/Transport Corporation is 1st respondent in M.C.O.P.No.3687 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by her in the accident that took place on 10.06.2005.

3.According to the 1st respondent, on the date of accident i.e., on 10.06.2005 at about 12.15 p.m., while she was travelling in a bus belonging to the appellant/Transport Corporation from Kallakurichi to Chennai, near Katpadi Railway Gate, Villupuram Town and in front of a graveyard, the driver of the said bus dashed against a lorry belonging to the 2nd respondent insured with the 3rd respondent, due to which, the 1st respondent and others were thrown away and thus the accident has occurred. In the accident, the 1st respondent sustained multiple injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 and 3 and the appellant/Transport Corporation.

4.The respondents 2 and 3, owner and insurer of the lorry respectively, remained exparte before the Tribunal.

5.The appellant/Transport Corporation filed counter statement denying the averments made by the 1st respondent and stated that while the driver of the bus belonging to the appellant/Transport Corporation was driving the bus in a careful manner, the driver of the lorry suddenly stopped the lorry in the middle of the road and on seeing this, in order to avoid the accident, the driver of the bus, who was trying to stop the bus, slightly dashed against the corner of the lorry. Therefore, the accident has occurred only due to negligence on the part of the driver of the lorry. Therefore, the appellant/Transport Corporation is not liable to pay any compensation to the 1st respondent. The appellant has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.N.Saichandran was examined as P.W.2 and seven documents were marked as Exs.P1 to P7. The appellant/Transport Corporation did not let in any oral and documentary evidence.

7.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 appellant/Transport Corporation and directed the appellant to pay a sum of Rs.3,83,000/- as compensation to the 1st



respondent. The Tribunal dismissed the claim petition as against the respondents 2 and 3, owner and insurer of the lorry.

8. Against the said award dated 21.03.2012 made in M.C.O.P.No.3687 of 2006, the appellant/Transport Corporation has come out with the present appeal.

9. Though the learned counsel appearing for the appellant/Transport Corporation has raised various grounds with regard to negligence in the grounds of appeal, at the time of arguments, he has restricted his arguments only with regard to quantum of compensation granted by the Tribunal.

10. The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the 1st respondent has not produced any valid document to prove her age and income. The Tribunal erred in applying multiplier '15'. P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent has suffered 70% disability. P.W.2/Doctor has not deposed that the 1st respondent suffered functional disability and she lost her earning capacity. The Tribunal erred in awarding compensation towards loss of earning power by fixing 40% disability and by adopting multiplier method. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. Though the 1st respondent has entered appearance through her counsel, when the matter came up for hearing on 21.12.2020, there was no representation for the 1st respondent and to give one more opportunity, the matter was directed to be posted today. When the matter is taken up for hearing today, there is no representation for the 1st respondent.

12. Heard the learned counsel appearing for the appellant/Transport Corporation and perused the entire materials available on record.

13. From the materials on record, it is seen that it is the contention of the 1st respondent that in the accident, she suffered fracture, crush injury on her left ankle and multiple fractures on the right thigh and left leg. The 1st respondent examined the Doctor as P.W.2, who deposed about the injuries sustained and treatment taken by the 1st respondent. P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent has suffered 70% disability. In the absence of any material evidence, without giving any reason, the Tribunal fixed the disability of the 1st respondent as 40% for loss of earning power and awarded compensation towards loss of earning power by adopting multiplier method. The 1st respondent has not proved



that she suffered functional disability and lost her earning capacity. Therefore, the 1st respondent is not entitled to compensation by adopting multiplier method. P.W.2/Doctor has certified that the 1st respondent has suffered 70% disability. The appellant did not let in any contra evidence to the evidence of P.W.2/Doctor and the disability certificate issued by him. Therefore, the 1st respondent is entitled to compensation for 70% disability. The accident is of the year 2005 and hence, a sum of Rs.2,000/- is awarded per percentage of disability. Thus, the 1st respondent is entitled to a sum of Rs.1,40,000/- (Rs.2,000/- X 70%) towards disability. 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 earning capacity	3,24,000	1,40,000	Reduced
2.	Pain and suffering, extra nourishment and transportation	50,000	50,000	Confirmed
3.	Loss of income	9,000	9,000	Confirmed
	Total	3,83,000	1,99,000	Reduced by Rs.1,84,000/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,83,000/- awarded by the Tribunal is hereby reduced to Rs.1,99,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit the 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 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to



the credit of M.C.O.P.No.3687 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. This appeal is dismissed as against the respondents 2 and 3. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge
The Motor Accident Claims Tribunal
Fast Track Court No.III, Chennai.

2.The Section Officer
VR Section, High Court
Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.42564

C.M.A.No.3477 of 2014
and M.P.No.1 of 2014

NRL (CO)
GMY (01/09/2021)