

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1613 of 2017

Baby

.. Appellant/Petitioner

Vs.

The Managing Director
The Chennai Metropolitan Transport Corporation Ltd.
Pallavan House
Annasalai
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 26.11.2015 made in M.C.O.P.No.695 of 2011 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri.

For Appellant : Ms.A.Subadra for Ms.M.Malar

For 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 26.11.2015 made in M.C.O.P.No.695 of 2011 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri.

2.The appellant is claimant in M.C.O.P.No.695 of 2011 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri. She filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 12.10.2011.

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.1,20,000/- 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 seeking enhancement of compensation.

5.The learned counsel appearing for the appellant/claimant contended that the appellant was aged 45 years at the time of accident and she was earning a sum of Rs.5,000/- per month by working as house maid. The appellant sustained crush injury over the right foot and multiple injuries all over the body. She underwent plastic surgery. P.W.2/Doctor has assessed the disability of the appellant as 45%. The Tribunal without giving any reason, reduced the disability to 25%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal towards extra nourishment, pain & suffering and loss of income are meagre. The Tribunal has not awarded any compensation towards future medical expenses, damage to clothes and attendant charges and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellant has not produced any document to prove that she suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method adopted by the Tribunal while awarding compensation towards disability is proper. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation. 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/Transport Corporation and perused all the materials available on record.

8.It is the contention of the appellant that she was earning a sum of Rs.5,000/- per month by working as house maid. The Tribunal accepting the same, fixed a sum of Rs.5,000/- as monthly income of the appellant and awarded a sum of Rs.10,000/-

towards loss of income for two months. Due to the injuries sustained by the appellant, she would not have attended her work atleast for a period of six months. Therefore, a sum of Rs.30,000/- (Rs.5,000/- X 6) is awarded towards loss of income for six months. According to the appellant, she sustained crush injury on her right foot and underwent plastic surgery. The appellant examined one Dr.R.Thiyagarajan as P.W.2, who has assessed the disability of the appellant at 45%. The Tribunal reduced the disability to 25% holding that P.W.2 is not the Doctor who treated the appellant, he is not an orthopedic surgeon and awarded a sum of Rs.75,000/- (25% x Rs.3,000/-) towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant has not proved that she suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 35% disability at the rate of Rs.3,000/- per percentage of disability. Hence, a sum of Rs.1,05,000/- (35% x Rs.3,000/-) is awarded towards disability. The appellant has taken treatment in Rajiv Gandhi Government Hospital, Chennai, as in-patient from 12.10.2011 to 09.11.2011. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.25,000/- is awarded towards attendant charges. A sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any compensation towards damage to clothes and hence, a sum of Rs.1,000/- is awarded towards damage to clothes. The appellant has not produced any document to show that she is taking treatment till today and therefore, she is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.	Pain and suffering	20,000	20,000	Confirmed
2.	Loss of income	10,000	30,000	Enhanced
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Transportation charges	10,000	10,000	Confirmed
5.	Permanent disability	75,000	1,05,000	Enhanced
6.	Damage to cloth	-	1,000	Granted
7.	Attendant charges	-	25,000	Granted
	Total	Rs.1,20,000/-	Rs.2,01,000/-	Enhanced by - Rs.81,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,20,000/- is hereby enhanced to Rs.2,01,000/- 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 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.

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Sd/-
Asst. Registrar

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Sub Asst. Registrar

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To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Ponneri.

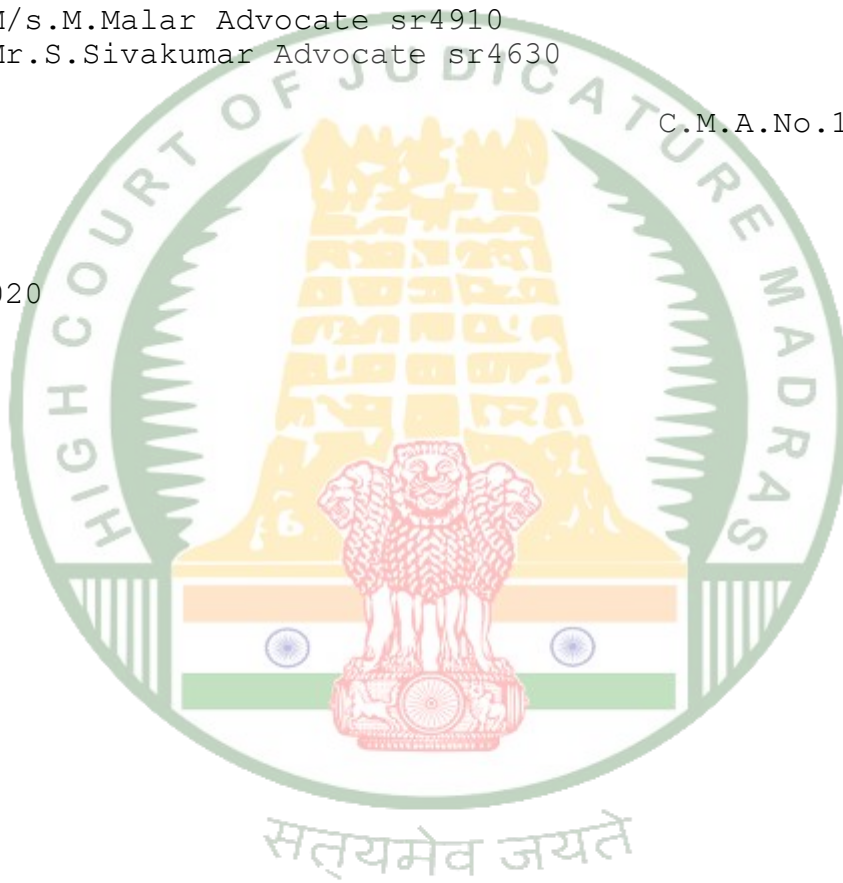
2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to M/s.M.Malar Advocate sr4910

+1 cc to Mr.S.Sivakumar Advocate sr4630

C.M.A.No.1613 of 2017

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