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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1812 of 2017

A.Vijayalakshmi

..Appellant/Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kancheepuram.

2. S.Kalidasan

3. The Manager, ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabai Centre,
Nungambakkam,
Chennai - 600 003.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988 against the Judgment and Decree dated 10.11.2016 made in MCOP.No.5969 of 2012 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan
For Respondent No.1 : Mr. K.J.Sivakumar
For Respondent No.2 : No appearance
For Respondent No.3 : Ms.K.Poomalai

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant / claimant challenging the award of a sum of Rs.8,36,200/- as total compensation payable to the claimant by the third respondent.

2. The case of the appellant / claimant is that on 21.06.2012 at about 09.15 hrs while he was travelling as a passenger in the TNSTC Bus bearing Registration No.TN-21-N-0801 from Vandavasi to Kancheepuram, the Tata Ace Van bearing Registration No.TN25-AY-1801 came from the opposite direction in a rash and negligent manner, tried to overtake the bus on its right side and suddenly the van driver lost his control and dashed against the right rear side corner of the bus, due to which, the claimant, who was sitting at the right rear corner near the bus window, sustained grievous injuries. Stating that the accident had happened due to the rash and negligent driving of the drivers of both the bus and the van, the claimant filed a



claim petition claiming a sum of Rs.25,00,000/- as total compensation. The Tribunal has directed the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the van.

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3. The claim was resisted by the Insurer of the van / third respondent herein, by denying the age, occupation, monthly income of the claimant, apart from denying the manner of accident and injuries sustained by the claimant. The Tribunal, by taking into consideration the evidence and materials available on record, more particularly, the evidence of P.W.1 and R.W.2 and Exs.P-1, P-2 and P-4, has fixed the negligence on the driver of the Tata Ace Van and ultimately fastened the liability on the Insurer / third respondent and dismissed the claim petition as against Transport Corporation / first respondent and quantified the total compensation at Rs.8,36,200/-. Being dissatisfied with the quantum so awarded, the appellant / claimant has filed the present appeal seeking enhancement of compensation.

4. The contention of the learned counsel for the appellant / claimant is that the amounts awarded under each and every heads by the Tribunal are too low, which need considerable increase; the Tribunal lost sight of the fact that the appellant was working as a Warden in a school and earning Rs.8,000/- per month, besides earning Rs.7,000/- by doing typing work, which was evident from Exs.P-24 to P-27; and the interest awarded at 7.5% per annum is on the lower side and the Tribunal ought to have awarded 9% interest per annum. Thus, the learned counsel prayed for enhancement to some extent.

5. On the other hand, the learned counsel for the third respondent / Insurer of the Tata Ace Van submitted that the Tribunal has taken into consideration each and every aspect and has awarded the just compensation and also ordered pay and recovery, which does not require any interference at the hands of this Court. She further submitted that the interest awarded at 7.5% per annum is perfectly valid, since the accident had occurred in the year 2012 and hence, the same may be confirmed.

6. Heard both sides and perused the materials available on records.

7. There is no grievance as regards the findings of the Tribunal pertaining to negligence and liability aspects and hence, the same are confirmed as such.

8. In order to quantify the compensation, the monthly income of the injured, her age, her future prospective increase in income, the impact of disability upon her earning capacity are



relevant factors to be considered. It is borne out from the records that immediately after the accident the claimant / injured / appellant took treatment in various hospitals as in-patient. To prove the same, Exs.P-2, P-3 and P-6-Discharge summaries have been filed. P.W.2-Dr.Mathiazhagan was examined to speak about the disability suffered by the claimant, wherein he opined that the injuries sustained by the claimant are permanent in nature and assessed the same at 80%. Exs.P-28 and P-29-Disability Certificates have been filed to prove such statement. Though there was an argument on the side of the third respondent that the disability percentage is excessive, it was borne out from the records that the claimant had sustained (i) Grade III Compound Distal Communitated Fracture of right distal 3rd raduis; (ii) Crush injury right upper limb; and (iii) right hand above elbow was amputated. In the absence of any work-sheet and guidelines, the Tribunal has taken the same at 30%. This Court is of the opinion that such a finding by the Tribunal has to be re-visited.

9. There is an evidence by the Doctor to the effect that the claimant's elbow has been amputated below the shoulder level and it is a schedule injury at 80%. The Tribunal has failed to consider the vital document, Disability Certificate issued by the Government Institute of Rehabilitation Medicine, which has been marked as Ex.P-11. Since it is substantial to prove on account of all relevant circumstances, while assessing the compensation on the nature of injury, i.e., 80% total and permanent disability, the Tribunal ought not to have rejected the said document. Apart from this, the Tribunal failed to consider Ex.P-29-Disability Certificate which states that the claimant was done with wound debridement on 21.06.2010, external fixation spanning elbow applied on 22.06.2012, SSG done on 19.07.2012 and the total permanent disability was estimated at 80%. One can imagine that these kinds of injuries definitely contribute to a person's disability at 80%. The Claimant is a typist by avocation. Hence these kinds of injuries and discomforts will definitely affect her earning capacity.

10. So far as the age of the injured is concerned, she was aged 43 years at the time of accident and in respect of a person aged 43 years, the proper multiplier to be adopted is '14'. Considering the future prospective increase in income by 30%, in respect of the claimant in her age group, the loss of earning capacity should be calculated. Fixing the monthly income at Rs.8,000/- and adding Rs.2,400/- (30% towards future prospective increase in income) and adopting multiplier of 14 and taking the functional disability also at 80%, the compensation payable under the head loss of future earnings on account of permanent disability would be Rs.13,97,760/- ([Rs.8,000/- + Rs.2,400/-] x 12x14x80/100) and accordingly the same is awarded.



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11. As far as the compensation awarded by the Tribunal under remaining heads are concerned, the same are in line with the reported decisions, documents and evidence on record and hence the same are confirmed as such.

12. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Functional disability	13,97,760/-
Pain and suffering	1,00,000/-
Extra nourishment	50,000/-
Transport to hospital	50,000/-
Damages to clothes	2,000/-
Attender charges	26,600/-
Medical expenses	64,410/-
Future medical expenses	10,000/-
Loss of income	80,000/-
Loss of amenities	50,000/-

TOTAL.....	18,30,770/- =====

13. In the result, this Civil Miscellaneous Appeal filed by the claimant/ appellant is partly allowed, by enhancing the total amount of compensation from Rs.8,36,200/- to Rs.18,30,770/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit. The third respondent shall deposit the compensation amount now arrived at by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the same, on making proper application before the Tribunal. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. The pay and recovery ordered by the Claims Tribunal shall remain unaltered. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar



To

1.The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

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

+1 CC to Mr.A.A.Venkatesan, Advocate sr 27434

+1 CC to Mr.K. Poomalai, Advocate sr 27703.

C.M.A.No.1812 of 2017

RGN(CO)
SP(09/09/2021)