

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.598 of 2017

Bernadathmary

.. Appellant/Petitioner

Vs.

1.Anthony

2.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Kumbakonam Town, Thanjavur. ... Respondents/Respondents
R1 set exparte before Tribunal

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2011 made in M.C.O.P.No.66 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Ms.T.Lavanya
for Mr.S.Sounthar

For R2 : Mr.D.Venkatachalam
R1 : Exparte

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 02.08.2011 made in M.C.O.P.No.66 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Karaikal.

2.The appellant is claimant in M.C.O.P.No.66 of 2009 on the file of Motor Accident Claims Tribunal, District Court, Karaikal. She filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 18.11.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver of the

bus belonging to the 2nd respondent/Transport Corporation and directed the 2nd respondent/Transport Corporation to pay a sum of Rs.54,000/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 contended that the appellant was aged 48 years at the time of accident and was earning a sum of Rs.200/- per day by working as agricultural coolie. The Tribunal has awarded only a sum of Rs.2,000/- towards loss of income. The appellant sustained grievous injuries on her both legs. Due to the injuries sustained by her, she could not continue her work as she was doing earlier. PW2/Doctor examined the appellant and assessed that appellant suffered 35% disability. The appellant has marked Ex.P8/disability certificate to prove the same. The Tribunal without any reason reduced the disability of the appellant to 20%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove her avocation and income. The appellant failed to prove that she lost income due to the injuries. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal has rightly granted a sum of Rs.2,000/- towards loss of income of the appellant. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre 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 2nd respondent/Transport Corporation and perused all the materials available on record.

8. It is the contention of the appellant that she sustained grievous injuries on her both legs. She has taken treatment as in-patient in Government Hospital, Puducherry from 21.01.2009 to 16.02.2009. During treatment period, skin grafting and surgery was done. The appellant examined one Dr.P.Rajagopal as P.W.2 to prove the disability. P.W.2/Doctor has assessed the disability of the appellant as 35%. The appellant has produced Ex.P8/disability certificate to show that she suffered 35%

disability. The 2nd respondent did not let in any evidence to disprove the evidence of P.W.2/Doctor and disability certificate marked as Ex.P8. The Tribunal reduced the disability to 20% holding that the percentage of disability assessed by the doctor is on the higher side and awarded a sum of Rs.20,000/- (20% x Rs.1,000/-) towards disability at the rate of Rs.1,000/- per percentage of disability, which is meagre. Considering Ex.P8/disability certificate and date of accident, the appellant is entitled to compensation for 35% towards disability at the rate of Rs.2,000/- per percentage in the absence of any contra evidence. Thus, a sum of Rs.70,000/- (35% x Rs.2,000/-) is granted towards disability.

9. According to the appellant, she was earning a sum of Rs.200/- per day by working as an agricultural coolie. The appellant has not filed any document to substantiate the said contention. The Tribunal has awarded a sum of Rs.2,000/- towards loss of income for two months, which is meagre. The accident is of the year 2008. A sum of Rs.5,000/- is fixed as monthly income of the appellant. Considering the nature of injuries and period of treatment taken by the appellant, she would not have attended her work atleast for a period of three months. Therefore, a sum of Rs.15,000/- is awarded towards loss of income for three months. The amounts 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 or reduced
1.	Partial permanent disability	20,000	70,000	Enhanced
2.	Pain and sufferings	25,000	25,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Loss of income	2,000	15,000	Enhanced
5.	Transportation expenses	2,000	2,000	Confirmed
	Total	Rs.54,000/-	Rs.1,17,000/-	Enhanced by - Rs.63,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.54,000/- is hereby enhanced to Rs.1,17,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mtl

To

1.The District Judge,
The Motor Accident Claims Tribunal
Karaikal.

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

+1 cc to the Mr.S.Sounthar Advocate sr10147

+1 cc to the Mr.D.Venkatachalam Advocate sr9964

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