

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.815 of 2017

Sukla Roy

.. Appellant/Petitioner

Vs.

The Managing Director,
State Express Transport Corporation,
Division No.1, Pallavan Street,
Chennai 2.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2013 made in M.C.O.P.No.415 of 2010 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Puducherry.

For Appellant : Mr.S.C.Vishwanth

For Respondent : Mr.K.J.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 26.04.2013 made in M.C.O.P.No.415 of 2010 on the file of Motor Accident Claims Tribunal, III Additional District Court, Puducherry.

2.The appellant is the claimant in M.C.O.P.No.415 of 2010 on the file of Motor Accident Claims Tribunal, III Additional District Court, Puducherry. She filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.07.2008.

3.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 respondent/Transport Corporation and directed the respondent

to pay a sum of Rs.3,51,500/- 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 in the accident, the appellant sustained grave injuries at her spinal cord. Due to which, she is unable to stair up or sit down till the end of her life. She underwent operation to remove the nails and rods placed in the spinal cord and incurred huge amount towards medical expenses. But the Tribunal awarded a meagre amount towards future medical expenses. P.W.3/Doctor has assessed the disability of the appellant as 49%, but the Tribunal has reduced the disability to 45%. 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 respondent/Transport Corporation contended that the Tribunal rightly reduced the percentage of disability from 49% to 45% on the ground that the Doctor who assessed the percentage of disability of the appellant has not treated her during the treatment period. The Tribunal after considering the materials available on record, 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 and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant has contended that she sustained grave injuries at her spinal cord. P.W.3/Doctor has assessed the disability of the appellant as 49%. The Tribunal has reduced the same to 45%, on the ground that Doctor who issued disability certificate has not treated the appellant. The reason given by the Tribunal for reducing the percentage of disability is proper. At the time of the accident, the appellant was working as cloth merchant and was earning a sum of Rs.6,000/- per month. The appellant has not produced any material evidence to prove the same. In the absence of material evidence, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant. The accident occurred in the year 2008. The monthly income of the appellant fixed by the Tribunal is meagre and hence a sum of Rs.6,000/- is fixed by this Court as monthly income of the appellant. Due to the nature of injuries, the appellant would not have attended her work atleast for a period of six months. Hence, a sum of Rs.36,000/- (Rs.6,000/- X 6) is awarded towards loss of income.

The appellant has taken treatment as in-patient in JIPMER Hospital from 14.07.2008 to 18.07.2008 and again she was admitted in MIOT Hospital from 19.07.2008 to 28.07.2008. Considering the nature of injuries and the period of treatment taken by the appellant, a sum of Rs.20,000/- awarded by the Tribunal towards pain and sufferings and mental agony is meagre and the same is enhanced to Rs.30,000/-. The Tribunal awarded a meagre amount towards extra nourishment and the same is enhanced to Rs.25,000/-. The Tribunal has failed to award any amount towards loss of damage to clothes and loss of amenities. The appellant is entitled to a sum of Rs.10,000/- towards loss of amenities and Rs.1,000/- towards loss of damage to clothes. Though the appellant has contended that she has to undergo further surgery for removal of nails and screws from spinal cord, she has not filed any documents to substantiate her claim. In the absence of any documentary evidence, the Tribunal considering the nature of injuries and the surgeries undergone by the appellant, has awarded a sum of Rs.25,000/- towards future medical expenses and the same is just and reasonable. 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.	Disability	90,000	90,000	Confirmed
2.	Pain and suffering & mental agony	20,000	30,000	Enhanced
3.	Extra nourishment	10,000	25,000	Enhanced
4.	Travelling expenses	10,000	10,000	Confirmed
5.	Medical expenses	1,76,500	1,76,500	Confirmed
6.	Loss of income	20,000	36,000	Enhanced
7.	Future Medical expenses	25,000	25,000	Confirmed
8.	Loss of amenities	-	10,000	Granted

9.	Loss of damage to clothes	-	1,000	Granted
	Total	3,51,500/-	Rs.4,03,500/-	Enhanced to Rs.52,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,51,500/- is hereby enhanced to Rs.4,03,500/- 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 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. It is made clear that the appellant/claimant is not entitled for any interest for the delay period on the amount of Rs.52,000/-, enhanced by this Court, as per the order of this Court dated 23.02.2017 made in C.M.P.No.2406 of 2016 in C.M.A. (SR). No. 8705 of 2016. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr

To

1. The III Additional District Court,
The Motor Accident Claims Tribunal,
Puducherry.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.S.C.Vishwanth, Advocate Sr.No. 2832

C.M.A.No.815 of 2017

PA(CO)
RMP(05/01/2021)