

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2020
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4816 OF 2019

Rakkini

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.10.2018 made in M.C.O.P.No.3766 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Chennai.

For Appellant : Mr.K.Suryanarayanan
For Respondent : Mr.S.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 04.10.2018 made in M.C.O.P.No.3766 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Chennai.

2. By consent of both the parties, this appeal is taken up for final hearing at the admission stage itself.

3. The appellant is the claimant in M.C.O.P.No.3766 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Chennai. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 10.01.2010.

4.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 Metropolitan Transport Corporation bus bearing Registration No.TN 01 N 5446 and directed respondent to pay a sum of Rs.2,14,000/- as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant contended that the Tribunal without considering the nature of injuries suffered by her, awarded a meagre amount of Rs.2,14,000/- as compensation. The appellant has contended that she was a sales supervisor in Shanthi Shopping mart, Chennai and was earning a sum of Rs.12,000/- per month. Due to the injuries, she suffered 45% permanent disability and she could not continue her work as she was doing earlier. The appellant has examined P.W.2-Doctor to prove the disability and injuries suffered by her. The Tribunal erroneously reduced the percentage of disability from 45% to 35%. The amounts awarded by the Tribunal for disability and loss of earning power are meagre. The Tribunal ought to have adopted multiplier method and granted compensation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that considering the nature of injuries, the disability certificate given by P.W.2/Doctor is excessive. The Tribunal has considered the evidence of P.W.2/Doctor and has rightly reduced the percentage of disability to 35% and awarded compensation. The appellant failed to prove the income. In the absence of any material evidence to prove that the appellant lost his income during treatment period, the Tribunal has awarded a sum of Rs.10,000/- towards loss of earning, which is not meagre. In any event, the amounts awarded by the Tribunal under other heads are excessive and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

9. It is the contention of the appellant that due to accident, she suffered fracture in the left hand and multiple injuries all over her body. To substantiate the injuries sustained by her, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability as 45%. The Tribunal has fixed the disability as 35% and awarded Rs.1,05,000/- towards disability at the rate of Rs.3,000/- per percentage, on the ground that the disability assessed by the Doctor is on the higher side. The said reasoning is erroneous. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 45% disability at the rate of Rs.3,000/- per percentage. Thus, the

amount awarded by the Tribunal towards disability is enhanced to Rs.1,35,000/- at the rate of Rs.3,000/- per percentage of 45% disability. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of earning. Due to injuries, the appellant would not have attended her work atleast for a period of three months. The appellant has contended that she was working as a sales supervisor and was earning a sum of Rs.12,000/- per month, but she failed to prove the same. In the absence of any material evidence, the monthly income of the appellant is fixed as Rs.7,000/- and a sum of Rs.21,000/- (Rs.7,000/- x 3) is awarded towards loss of earning for a period of three months. The Tribunal has awarded a meagre sum towards transportation and extra nourishment and the same are hereby enhanced to Rs.5,000/- each. The Tribunal has failed to award any amount towards loss of amenities. Considering the fact that the appellant has sustained fracture on her left hand, this Court is inclined to award a sum of Rs.5,000/- towards loss of amenities. The amounts awarded by the Tribunal under the other heads are just and reasonable and hence they 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
1.	Loss of earnings	10,000/-	21,000/-	enhanced
2.	Transportation	3,000/-	5,000/-	enhanced
3.	Extra nourishment	3,000/-	5,000/-	enhanced
4.	Future medical expenses	50,000/-	50,000/-	confirmed
5.	Medical expenses	18,000/-	18,000/-	confirmed
6.	Attendant charges	5,000/-	5,000/-	confirmed
7.	Pain and sufferings	20,000/-	20,000/-	confirmed
8.	Permanent disability	1,05,000/-	1,35,000/-	enhanced
9.	Loss of amenities	-	5,000/-	granted
	Total	Rs.2,14,000/-	Rs.2,64,000/-	enhanced by Rs.50,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,14,000/- is hereby enhanced to Rs.2,64,000/- 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 the Court fee, if any on the enhanced amount of 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 by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Principal Special Judge,
Motor Accident Claims Tribunal,
Chennai.

+lcc to Mr.K.Suryanarayanan, Advocate, S.R.No.468

+lcc to Mr.S.Sivakumar, Advocate, S.R.No.1121

C.M.A.No.4816 of 2019

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