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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.242 OF 2012

Vijayalakshmi

... Appellant/Claimant

..VS..

Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Pallavan Salai,
Chennai - 600 002.

... Respondent/Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order in M.C.O.P.No.1925 of 2007 dated 28.03.2011 on the file of IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran

For Respondents : Mr.D.Raghu

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order in M.C.O.P.No.1925 of 2007 dated 28.03.2011 on the file of IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. On 12.06.2006 at about 4.30 a.m., while the appellant/ claimant was traveling as a passenger in TNSCTC bus bearing Regn.No.TN-55-N-0358 along G.S.T.Road, the driver of the



above bus drove the vehicle in a rash and negligent manner and went at a dangerous speed and dashed against the back side of the lorry. Thereby the appellant/ claimant sustained grievous injuries. Claiming that the driver of the bus is responsible for the accident and the respondent/ Transport Corporation as the owner of the bus is liable to pay the compensation, the claimant has claimed a compensation of Rs.4,00,000/-.

3. Before the Tribunal, the claimant and two other witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P14 were marked on the side of the claimants. On the side of the respondent the driver of the bus was examined as RW1 and no documents were marked. Considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.1,28,500/- along with the interest at 7.5% p.a. Aggrieved by the said quantum of compensation, the claimant has come up on appeal seeking enhancement.

4. Mr.K.A.Ravindran, learned counsel appearing for the appellant would submit that the disability certificate issued by PW3 was marked as Ex.P14. In support of the aforesaid certificate PW3 Dr.Mathiazhagan was examined and he had deposed that the appellant had suffered 40% of the disability. But, the Tribunal without any basis has fixed the percentage of disability at 35% for the appellant/ claimant. The learned counsel for the appellant has also raised the ground that the award passed by the Tribunal under the other heads are also inadequate, hence, seeks enhancement of the compensation amount.

5. Mr.D.Raghu, the learned counsel appearing for the respondent/ Transport Corporation would submit that the Tribunal has considered the oral and relevant documentary evidence and awarded a fair and just compensation to the appellant. Therefore, the appeal is liable to be dismissed.

6. Considered the rival submissions and perused the materials available on record.

7. Regarding the percentage of disability, the Tribunal has reduced the percentage of disability to 35% but has not given any reason for reducing the percentage of disability. Whereas the Doctor, who assessed the disability at 40% was examined as PW3 and the disability certificate, Ex.P14 was



marked and the documents relating to the assessment of the disability viz., Ex.P3 copy of Accident Register, Ex.P5 Wound Certificate and Ex.P13 X-ray film were also marked. Therefore, this court is of the view that the assessment of the Doctor, PW3 is fairly reasonable and this court accepts the evidence of PW3 as well as disability certificate produced by the appellant/claimant before the Tribunal and fixes the percentage of disability at 40%. Thus, the amount awarded under the head of permanent disability is enhanced to Rs.80,000/- [Rs.2,000/- x 40].

8. As far as the head of pain and sufferings is concerned the Tribunal has awarded a sum of Rs.5,000/-, this court is of the view that the said amount under the head of pain and sufferings is on the lower side and the same is enhanced to Rs.10,000/- and for the head of attendant charges, the Tribunal has not awarded any amount and this court award a sum of Rs.10,000/- under the said head.

9. In so far as the other heads are concerned, the amounts awarded by the Tribunal are just and reasonable and this court does not warrant interference. Therefore, this court has enhance the compensation amount under the heads as follows:-

Heads	Compensation awarded by the Tribunal	Compensation Enhanced/ awarded by this Court
Loss of Income	Rs. 13,500/-	Rs. 13,500/-
Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-
Medical Expenses	Rs. 30,000/-	Rs. 30,000/-
Pain and sufferings	Rs. 5,000/-	Rs. 10,000/-
Permanent disability	Rs. 70,000/-	Rs. 80,000/-
Attendant Charges	-	Rs. 10,000/-
Total	Rs.1,28,500/-	Rs.1,53,500/-



10. Thus, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation amount from Rs.1,28,500/- to Rs.1,53,500/- (Rupees One lakh Fifty Three thousand five hundred only) with interest @ 7.5% per annum from the date of claim petition till the date of payment. The respondent/ Transport Corporation is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of eight (8) 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 award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. The appellant/ claimant is directed to pay necessary court fee, if any, on the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

dsa

To

The Motor Accidents Claims Tribunal,
The IV Small Causes Judge,
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Raghu, Advocate, S.R.No.7352

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.7406

CMA.No.242 of 2012

SSI(CO)
RLP(28/09/2021)