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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.3712 OF 2012

Padmavathi

... Appellant/Petitioner

-VS-

Tamilnadu State Corporation Ltd.,
Villupuram Division,
Villupuram.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.342 of 2009 dated 27.03.2012 on the file of Additional District Sessions Judge, II Fast Track Court, Chennai.

For appellant : Mr.K.A.Ravindran
for M/s.A.Shanmugaraj

For Respondent : Mr.C.S.C.Sathish
(Senior Counsel)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree in M.C.O.P.No.342 of 2009 dated 27.03.2012 on the file of Additional District Sessions Judge, II Fast Track Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal



3. The case of the appellant / claimant is that on 17.08.2006 while the appellant / claimant was travelling as a passenger in the respondent's bus, the driver of the respondent's bus drove the bus with the rash and negligent manner and dashed against the Tempo which was driven from the opposite direction. Due to which she sustained fracture on her right elbow and distal humerus and multiple injuries all over her body. Immediately, she was taken to Government General Hospital, Chennai and she was admitted as in-patient from 17.08.2006 to 24.08.2006. Thereafter, she had taken treatment in Ramachandra Hospital. At the time of accident, she was aged about 39 years and she was working as Organizer in the Mid-day Meals Scheme in Aranvoyal Panchayat School and she was drawing Rs.2000/- per month as salary. Her disability was assessed at 65% partial disability and because of the injuries, she could not do the job as earlier.

4. Resisting the same, the respondent filed counter stating that the driver of the bus drove in the careful manner and only because of the appellant / claimant projecting her right hand outside the bus and as the van which was driven from the opposite side hit her hand she sustained injuries. Therefore, the respondent is not at all liable to pay any compensation as claimed by the appellant / claimant.

5. On the side of the appellant / claimant, she examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P13. On the side of the respondent no one was examined and no exhibit was marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that a sum of Rs.95,000/- (Rupees Ninety Five Thousand only) as compensation is payable by the respondent. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant / claimant came forward with the present Civil Miscellaneous Appeal for enhancement.

6. The learned counsel appearing for the appellant / claimant submits that the appellant / claimant was working as Organizer in the Mid-day Meal Scheme and she was drawing a salary of Rs.2000/- per month. Due to the injury sustained by her, she could not continue the service and she lost her job. The injuries sustained by her was assessed by the Doctor / P.W.2



at 65% Partial Permanent Disability. Due to the injuries sustained by her, she lost her job and she is not able to do her normal work. As such, the tribunal ought to have fixed the Loss of Earning as 100%. The tribunal also failed to award any amount under the head of Future Loss of Earning.

7. Per contra, the learned counsel appearing for the respondent would contend that the appellant / claimant did not produce any evidence to show that because of the injury, she lost her job. She only projected her hand while travelling in the bus and as such, the van which was driven in the rash and negligent manner hit the hand of the appellant / claimant. After discharge from the Government General Hospital, she was admitted at Ramachandra Hospital and her entire injury duly treated and the disability fixed by the P.W.2 is higher and the tribunal rightly awarded the compensation at Rs.95,000/- (Rupees Ninety Five Thousand only) and nothing warrants to enhance the compensation by this Court.

8. Heard Mr.K.A.Ravindran, learned counsel appearing for the appellant and Mr.C.S.C.Sathish, learned counsel appearing for the respondent.

9. The appellant / claimant was travelling in the respondent's bus on 17.08.2006 and due to rash and negligent driving of the driver of the respondent, the respondent's bus hit the van, which was coming from the opposite direction and due to which the appellant / claimant sustained fracture on her right hand. Immediately, she was taken to Government General Hospital and admitted as in-patient from 17.08.2006 to 24.08.2006. Thereafter, she was admitted in Ramachandra Hospital and taken treatment as in-patient.

10. The FIR was registered as against the driver of the respondent and no contra evidence produced by the respondent herein in respect of the negligence. Ex.P1 revealed that the appellant / claimant was working as an Organizer in Mid-day Meals Scheme at Aranvoyal Panchayat School. The Doctor who assessed the disability was examined as P.W.2. Ex.P3 revealed that the appellant / claimant was treated natively for few months. Further, Ex.P7 revealed that the appellant / claimant underwent indigenous treatment. Therefore, the Tribunal concluded that the Discharge Summary given by the Government



Hospital appears to be a bogus one. Since, no accident register is produced.

11. Insofar as the injuries sustained by the appellant / claimant is concerned, she was treated by the Ramachandra Hospital. The P.W.2 / Doctor who treated the appellant / claimant deposed that she could not do any work through her right hand. Therefore, the tribunal had taken into consideration awarded compensation of Rs.1000/- per percentage for her Pecuniary Loss.

12. Though the respondent failed to produce any contra evidence, except the FIR, admittedly the van which was driven from the opposite side, hit the bus and due to which, the appellant / claimant sustained injuries. According to the respondent, the appellant / claimant projected her right hand, as such, she alone sustained injuries and no passenger travelled in the bus sustained any injuries. Therefore, this Court finds no points for enhancement of compensation as awarded by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional District Sessions Judge,
II Fast Track Court,
Chennai.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.24272

C.M.A.No.3712 of 2012

SRA(CO)

RLP(29/10/2021)