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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.425 OF 2021

B.Premalatha

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Madurai, Nagercoil Region.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.12.2019 made in M.C.O.P. No.4104 of 2014, on the file of the Principal Special Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 30.12.2019 made in M.C.O.P. No.4104 of 2014, on the file of the Principal Special Court, (Motor Accidents Claims Tribunal), Chennai.

2.By consent of the learned counsel appearing for the appellant as well as the respondent, the appeal is taken up for final disposal at the admission stage itself.



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3.The appellant/claimant filed M.C.O.P.No.4104 of 2014, on the file of the Principal Special Court, (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 27.09.2013.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent driving by driver of Bus and directed the respondent-Transport Corporation to pay a sum of Rs.2,46,307/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.12.2019 made in M.C.O.P. No.4104 of 2014, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that the appellant suffered disability due to the injuries sustained in the accident. P.W.2 Doctor examined the appellant and certified that the appellant suffered 40% disability. The appellant filed disability certificate issued by P.W.2 Doctor and marked the same as Ex.P19. The Tribunal erroneously failed to consider Ex.P19 and failed to award any amount for disability. The learned counsel appearing for the appellant further submitted that the Tribunal failed to award any amount for future medical expenses and loss of income during treatment period. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal considering the nature of injuries and disability suffered by the appellant, awarded compensation under different heads excessively. The appellant has not suffered any loss of income. Even during treatment period, she has availed medical leave with pay and she has not suffered any loss of income. The appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

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



9. It is the case of the appellant that at the time of accident, she was working as a Principal at Bethlahem College of Education, Kanyakumari District and was earning a sum of Rs.20,000/- per month. In the accident, she suffered injuries and fracture. To prove her case, she examined herself as P.W.1, examined the Doctor as P.W.2 and marked disability certificate as Ex.P19. P.W.2 Doctor examined the appellant and certified that the appellant suffered 40% disability. She has taken treatment as in-patient at Ananthapuri Hospital in two different spells viz., from 28.09.2013 to 12.10.2013 and from 28.11.2013 to 04.12.2013, for a period of 22 days. The Tribunal has awarded a consolidated sum of Rs.3,000/- towards extra nourishment, attendant charges and miscellaneous expenses. The same is meagre and hence, enhanced to Rs.10,000/- towards attendant charges, Rs.10,000/- towards extra nourishment and Rs.5,000/- towards miscellaneous expenses. The Tribunal considering Exs.P10 to P12, held that the appellant availed medical leave with pay during the treatment period and has not suffered any loss of income and hence, he is not entitled to any amount towards loss of income. The same in is order. The appellant produced Ex.P19 - disability certificate issued by P.W.2 Doctor. The respondent did not let in any contra evidence to the evidence of P.W.2 Doctor and Ex.P19. On perusal of Ex.P19, it is seen that P.W.2 Doctor certified that the appellant suffered 40% partial permanent disability. The appellant has not let in any evidence to disprove the evidence of P.W.2 Doctor and Ex.P19 - disability certificate. Hence, the appellant is entitled to compensation for 40% disability. The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to any compensation by adopting multiplier method. The accident is of the year 2013. Hence, a sum of Rs.1,20,000/- (Rs.3,000/- x 40%) is awarded towards disability at the rate of Rs.3,000/- per percentage for 40% disability. Considering the nature of injuries and disability, this Court is of the considered view that the amounts awarded by the Tribunal towards other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Disability	-	1,20,000/-	Granted
2.	Attendant charges, extra nourishment and miscellaneous expenses	3,000/-	10,000/- 10,000/- 5,000/-	Enhanced
3.	Transportation charges	45,900/-	45,900/-	Confirmed
4.	Pain and suffering	10,000/-	10,000/-	Confirmed
5.	Loss of amenities	13,000/-	13,000/-	Confirmed
6.	Medical expenses	1,74,407/-	1,74,407/-	Confirmed
	Total	2,46,307/-	3,88,307/-	Enhanced by Rs.1,42,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,46,307/- is enhanced to Rs.3,88,307/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.4104 of 2014. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and



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costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

gsa

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.19298

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.19478

C.M.A.No.425 of 2021

VBM(CO)

RLP(29/10/2021)