



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3706 of 2019

Deivanayaki

.. Appellant/Claimant

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Hosue, Anna Salai,
Chennai - 600 002.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2018 made in M.C.O.P.No.4308 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondent : Mr.K.Moorthy

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.03.2018 made in M.C.O.P.No.4308 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.4308 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, 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 25.04.2014.

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 bus belonging to the respondent and directed the respondent-Transport Corporation to pay a sum of Rs.1,97,900/- 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 in the accident the appellant suffered fracture of both bone leg with degloving injury left foot and other multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P8/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 30% and awarded compensation only for 30% of disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded compensation for 45% disability. The appellant was a Flower Vendor and was earning a sum of Rs.350/- per day. But the Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for three months. The appellant has taken treatment at Rajiv Gandhi Government General Hospital as inpatient for 22 days from 25.04.2014 to 16.05.2014. The Tribunal has not awarded any amount towards loss of earning capacity, mental agony, future prospects, marital aspects and loss of expectation of life. The amounts awarded by the Tribunal towards disability, pain and sufferings, extra nourishment, transportation, attendant charges, medical expenses and future medical expenses are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal reduced the percentage of disability from 45% to 30% on the ground that P.W.2/Doctor has not filed any worksheet and guidelines for assessing the disability. Hence, the appellant is not entitled to compensation for 45% disability and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is excessive. The appellant has not produced any material evidence to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months, which is not meagre. The appellant has not suffered any functional disability and hence, she is not entitled to any compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation 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 and perused the entire materials on record.



9. From the materials available on record, it is seen that it is the contention of the appellant that in the accident she suffered fracture of both bone leg with degloving injury left foot and other multiple grievous injuries all over the body. To prove the same, the appellant examined herself as P.W.1 and Dr. Mathiazhagan as P.W.2. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P8/disability certificate to that effect. The Tribunal reduced the percentage of disability from 45% to 30% on the ground that P.W.2/Doctor has not filed any worksheet and guidelines for assessing the disability. The reason given by the Tribunal for reducing the percentage of disability from 45% to 30% is not correct. The respondent has not let in any evidence to disprove the evidence of P.W.2/Doctor and Ex.P8/disability certificate. Therefore, the appellant is entitled to compensation for 45% of disability. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S. Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,80,000/- ($\text{Rs.4,000/-} \times 45\% \text{ disability}$). The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to compensation towards loss of earning capacity.

10. It is the contention of the appellant that she was working as Flower Vendor and was earning a sum of Rs.350/- per day. She failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2014 and the notional income fixed by the Tribunal is meagre. A sum of Rs.10,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability suffered by the appellant in the accident, she would not have attended her work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.60,000/- ($\text{Rs.10,000/-} \times 6 \text{ months}$). The appellant has taken treatment at Rajiv Gandhi Government General Hospital as inpatient for 22 days from 25.04.2014 to 16.05.2014. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, extra nourishment and damages to clothes are meagre and the same are enhanced to Rs.20,000/-, Rs.15,000/- and Rs.2,000/- respectively. The amounts awarded by the Tribunal towards pain



and sufferings, transportation, medical expenses, future medical expenses and loss of amenities 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
1.	Disability	90,000/-	1,80,000/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	19,500/-	60,000/-	Enhanced
4.	Extra nourishment	5,000/-	15,000/-	Enhanced
5.	Damages to clothes	1,000/-	2,000/-	Enhanced
6.	Attendant charges	7,400/-	20,000/-	Enhanced
7.	Medical expenses	10,000/-	10,000/-	Confirmed
8.	Future medical expenses	5,000/-	5,000/-	Confirmed
9.	Transportation	5,000/-	5,000/-	Confirmed
10.	Loss of amenities	5,000/-	5,000/-	Confirmed
	Total	Rs.1,97,900/-	Rs.3,52,000/-	Enhanced by Rs.1,54,100/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,97,900/- is hereby enhanced to Rs.3,52,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, 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.4308 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for Rs.1,54,100/- the amount now enhanced by this Court, as per the order of this



Court dated 20.09.2019 made in C.M.P.No.17771 of 2019 in C.M.A.No.SR.58645 of 2019. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 02.08.2019 made in C.M.P.No.15760 of 2019 in C.M.A.No.SR.58645 of 2019. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.3706 of 2019

CP(CO)
GN(25/08/2021)