

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.140 of 2017

Saradha

....Appellant

Vs

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Thenimalai,
Thiruvannamalai Region,
Tiruvannamalai District.

....Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2014 made in M.A.C.T.O.P.No.66 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruvannamalai.

For Appellant

: Ms.A.Subadra

For Respondents

: Mr.K.J.Sivakumar

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondent.

2.The appeal is filed by the claimant seeking enhancement of compensation, being not satisfied with the award passed by the Tribunal.

3. The brief facts of the case is that on 01.02.2013, at about 8 a.m., when the appellant herein tried to board the transport Corporation bus bearing Registration No.TN 23 N 1540 at Tirukoilur Bus Stop, she fell down from the bus. The rear wheel of the bus ran over her and she was admitted in Government Hospital. In the accident, the claimant has sustained fractured injury on both her legs. A claim petition was filed seeking compensation of Rs.1,50,000/-, which was later amended to Rs.10,00,000/.

4. The claim petition was contested by the trial court on the ground that the accident happened only due to carelessness and negligence of the claimant and not due to the fault of the bus driver. To secure a seat, The

claimant tried to board the running bus, lost her balance and fell down. The driver of the bus who diligently drove the bus and turned cannot be attributed with any negligence.

5. Before the Tribunal, the claimant and the Doctor, who gave disability certificate were examined as P.W.1 and P.W.2. The driver of the bus and the Conductor were examined as R.W.1 and R.W.2. 7 Exhibits were marked on behalf of the claimant.

6. Considering the opinion given by the Doctor, P.W.2 and the nature of the injury, the Tribunal has fixed the disability at 40% and awarded Rs.80,000/-. Besides that, for loss of income during the treatment period, pain and suffering, Transportation and nourishment charges, compensation of Rs.66,000/- was awarded and a total sum of Rs.1,46,000/- was ordered to be paid by the Transport Corporation with 7.5% interest.

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7. The present appeal is filed on the ground that the injury sustained by the claimant is permanent in nature, which has deprived her earning capacity and therefore, the multiplier method has to be applied.

8. Learned counsel for the appellant/claimant would submit that the accident victim is an agricultural coolie. Due to the fractured injury on both her legs, she has lost her earning capacity and hence, following the principle laid down in ***Rajkumar vs. Ajay Kumar***, multiplier has to be applied.

9. Learned counsel appearing for the transport corporation would submit that the nature of injury caused to the claimant is not a scheduled injury or permanent total disability. The injury is avulsion of both legs with exposure muscles and tendon. The Doctor highly assessed 55% disability whereas the Tribunal has restricted to 40% and rightly awarded Rs.80,000/- for the said disability and under other heads, additional sum of Rs.66,000/- has been awarded.

10. The wound Certificate is marked as Ex.P6. The Doctor, who has clinically examined the victim has certified that the claimant has sustained injury on right ankle and left ankle with exposure of skin and muscles. She is not able to walk and her movement has been restricted. The said injury does not indicate that due to the injury, the earning capacity of the claimant

will be curtailed. The claimant who was examined as P.W.1 was brought to the Court with the help of assistance and that has been recorded by the learned Judge in the deposition itself. This indicates that the claimant was not in a position to walk on her own at the time of deposition. The said illness of the witness has not been further explained by the witness or through any other medical records to show that she is not capable of walking due to the accident.

11.The Tribunal which has seen the demeanor of the witness has come to a conclusion that the disability is 40%. In the circumstances, this Court is of the view that the injury sustained by the claimant will not attract the multiplier principle.

12.However, taking note of the fact that the Tribunal has not awarded any compensation for the loss of amenity and attender charges, which the claimant would have suffered and incurred due to the injury, an additional sum of Rs.15,000/- is awarded for loss of amenity and Rs.10,000/- is awarded for attender charges. For disability, the Tribunal has fixed Rs.2000/- for each percent disability. Since the accident occurred on

01.02.2013, the award per percentage of disability is fixed as Rs.3,000/- and accordingly, the compensation is also enhanced. As a result, the compensation payable to the appellant/claimant shall be as under:

<i>Compensation under Various Heads</i>	<i>Award passed by this Court</i>
Disability of 40% at Rs.3,000/- per percentage (40X3000)	Rs. 1,20,000/-
Loss of income	Rs. 16,000/-
Pain & Sufferings and Mental agony	Rs. 25,000/-
Extra Nourishment	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Loss of amenity	Rs. 15,000/-
Attender Charges	Rs. 10,000/-
Total	Rs. 2,11,000 /-

13. Accordingly, the award of Rs.1,46,000/- is enhanced to **Rs.2,11,000/-** with 7.5% p.a. from the date of petition till the date of deposit. The respondent transport corporation is directed to deposit the award amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount on appropriate application.

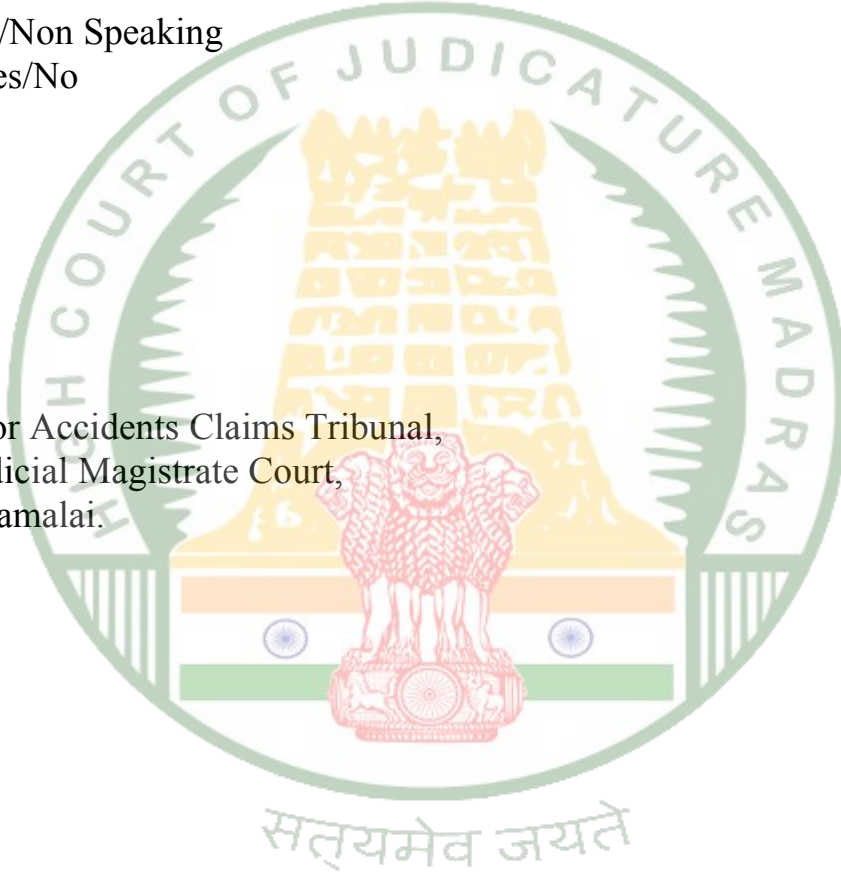
14. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

No order as to costs.

07.01.2021

Speaking/Non Speaking
Index :Yes/No
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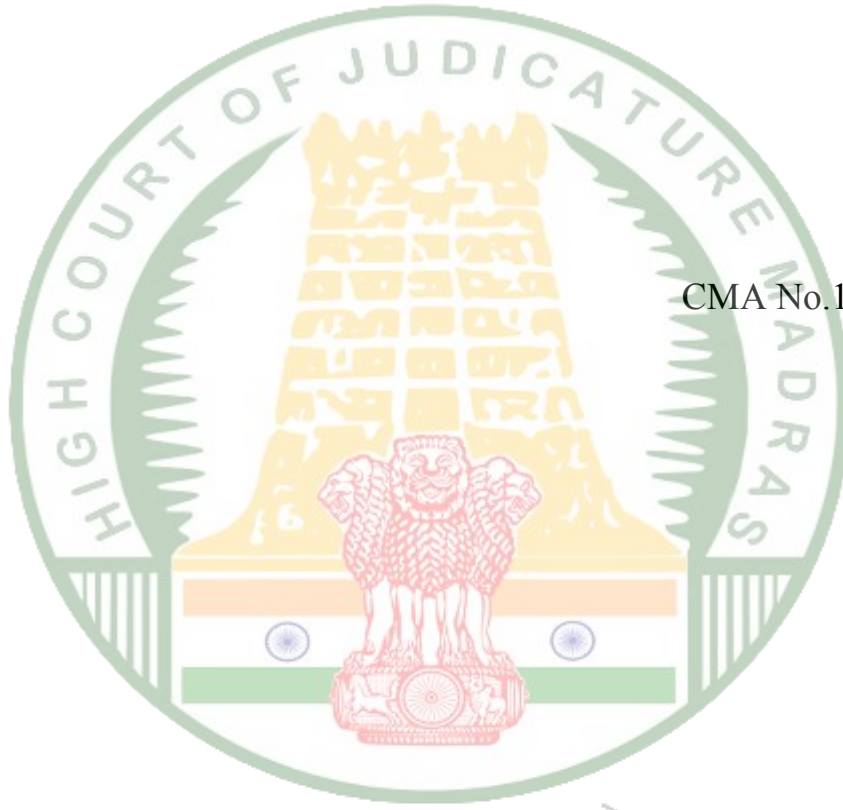
To
The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Tiruvannamalai.



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DR.G.JAYACHANDRAN,J.

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