

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	08.06.2021
Date of Judgment	01.07.2021

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A (MD) No.1100 of 2016

Tmt.P.Bessy : Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation,
represented through its Managing Director,
having its office at By-Pass Road,
Madurai-625 010. : Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 19.02.2016 made in MCOP No.256 of 2015 on the file of Motor Accident Claims Tribunal (Special Sub Court), Madurai.

For Appellant : Mr.C.Godwin

For Respondent : Mr.P.Prabhakaran

J U D G M E N T

Challenge made in this appeal is to the award, dated 19.02.2016 made in MCOP No.256 of 2015 on the file of Motor Accident Claims Tribunal (Special Sub Court), Madurai.

2.The short facts of the case is that on 07.05.2011 at about 12.45 pm, the claimant was travelling as a passenger in Tamil Nadu State Transport Corporation Bus TN-67-N-0543 from Trichy to Madurai and while the Bus was going near Thuvankurichi Senkulam village, the driver of the Bus attempted to overtake a Lorry, which was going in front of the Bus, dashed against the Lorry. The left front side of the Bus dashed against the rear right side of the Lorry. Due to it, the claimant sustained multiple fracture and immediately, he was taken to Meenakshi Mission Hospital, Madurai and on the same day, he was shifted to Apollo Speciality Hospital, Madurai, for further treatment. A claim petition was filed by the claimant seeking compensation of Rs.60,00,000/- for the injuries sustained by him in



the alleged accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Bus was responsible for the accident and awarded compensation of Rs.14,23,300/- together with interest @ 7.5% p.a. Being not satisfied with the award of the tribunal, the claimant as appellant is before this Court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant/claimant argued that the award passed by the tribunal under various heads are is on the lower side and hence, the claimant is entitled to get more compensation as claimed for in the claim petition and prays for allowing the Civil Miscellaneous Appeal.

6.On the other hand, the learned counsel appearing for the respondent/respondent argued that the claimant is a Teacher and after the accident also, she was working as 'Teacher' and there was no functional disability, but the tribunal wrongly came to the conclusion that the claimant had 20% functional disability and adopted multiplier method and the compensation awarded by the tribunal is not reasonable and it has to be reduced to some extent and prays that the Civil Miscellaneous Appeal has to be dismissed.

7.In this case, the Disability Certificate issued by PW5 was carefully perused. The Doctor stated that claimant had 50% permanent disability and 43% partial permanent disability. The above Disability Certificate issued by the PW5 is not correct, since the Doctor determined part permanent disability and part partial permanent disability on the body of the injured. It is the duty of the Doctor to determine whether the injured had partial permanent disability or permanent disability. The Doctor cannot determine the disability as partial permanent disability and permanent disability simultaneously. Hence, the disability determined by PW5 is not correct. Therefore, the disability fixed by PW5 is determined as 93% partial permanent disability.

8.The main contention raised on the side of the respondent/respondent is that the injured was working as Teacher after the accident also and hence, there was no functional disability for the injured and on the basis of the functional disability, the tribunal cannot adopt multiplier method for arriving the loss earning capacity of the injured and the loss of earning



capacity arrived by the tribunal is not correct and accordingly, the award of the tribunal under the head is liable to be set aside.

9. In this case, the injured was examined as PW1. PW1 during her cross examination admitted that after the accident also, she continued as Teacher and there was no reduction in the salary. Hence, from the evidence of PW1, it reveals that after the accident also, she continued as Teacher in the same school and there was no reduction in her salary. There are various judgments of the Hon'ble Apex Court to the effect that when the injured continued to do work after the accident and there was no reduction in the salary, it is presumed that there was no functional disability. In this case also, the injured herself admitted that she continued as Teacher, after the accident and there was no reduction in her salary. Hence, it is held that there was no functional disability for the injured. Therefore, the injured is entitled to Rs.3,000/- for 1% of disability for 93% partial permanent disability. In view of the above circumstances, the award of the tribunal under the head of loss of earning capacity is liable to be set aside and accordingly, it is set aside.

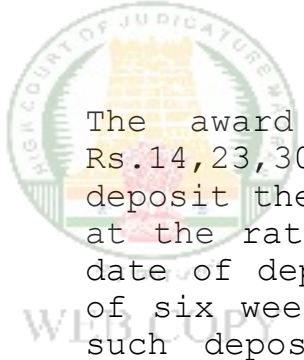
10. In so far as other heads, considering the facts and circumstances of this case and also considering the injuries sustained by the claimant, this court is inclined to award some enhancement. Accordingly, the award of the compensation is re-calculated as under:-

Head of compensation	Award of the tribunal (Rs.)	Award of this court (Rs.)
Loss of Income during treatment period	1,42,100/-	1,42,000/-
Transportation	5,000/-	5,000/-
Extra Nutrition	10,000/-	10,000/-
Damages to cloth	1,000/-	1,000/-
Medical expenses	4,18,000/-	4,18,000/-
Attender charges	50,000/-	1,14,000/-
Loss of amenities	20,000/-	1,00,000/-
Pain and sufferings	20,000/-	1,00,000/-
Loss of earning capacity	6,55,200/-	Nil -
Partial permanent disability	1,02,000/-	2,79,000/-
Total	14,23,300/-	11,69,000/-

Accordingly, the claimant would be entitled to Rs.11,69,000/- together with interest at the rate of 7.5% p.a.

<https://hcservices.ecourts.gov.in/hcservices/>

11. In fine, the Civil Miscellaneous Appeal is partly allowed.



The award of the tribunal is reduced to Rs.11,69,000/- from Rs.14,23,300/-. The respondent Transport Corporation is directed to deposit the modified amount of Rs.11,69,000/- together with interest at the rate of 7.5% p.a, from the date of claim petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire amount with accrued interest and costs, without filing any formal petition before the tribunal. The excess amount, if any shall be refunded to the respondent Transport Corporation. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Motor Accident Claims Tribunal/
Special Sub Court, Madurai.

2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-20860[F] dated 01/07/2021)

+1 CC to M/s.C.GODWIN, Advocate (SR-20859[F] dated 01/07/2021)

C.M.A(MD)No.1100 of 2016

01.07.2021

RD(23.08.2021) 4P 6C