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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2997 of 2014

Noorjahan

... Appellant/Petitioner

Vs.

1.J.Chinnaraj

2.The Managing Director,

Tamil Nadu State Transport Corporation Limited,

No.3/137, Salamedu, Vazhuthareddy,

Villupuram.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.07.2012 made in M.C.O.P.No.1762 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For R1 : Mr.R.Kannan

For R2 : Mr.K.J.Sivakumar

J U D G M E N T

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 12.07.2012 made in M.C.O.P.No.1762 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.1762 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as



3.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 2nd respondent and directed the 2nd respondent-Transport Corporation to pay a sum of Rs.2,97,913/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant sustained grievous injuries and fracture in the accident. She has taken treatment at Government Hospital, Krishnagiri and then shifted to Hosmat Hospital, Bangalore, where she has taken treatment as inpatient from 03.08.2006 to 17.08.2006 and again from 20.02.2009 to 23.02.2009. P.W.2/Doctor examined the appellant and certified that the appellant suffered 60% disability and issued Ex.A9/disability certificate to that effect. The appellant filed and marked documents and examined P.W.2/Doctor and proved the injuries and disability suffered by her. The respondents have not let in any contra evidence to disprove the case of the appellant. In the absence of any contra evidence, the Tribunal erroneously reduced the percentage of disability from 60% to 55% and granted compensation only for 55% disability. The Tribunal ought to have fixed the disability of the appellant at 60% as assessed by P.W.2/Doctor and granted compensation for 60% disability. Due to the injuries sustained by the appellant in the accident, she could not do any work as she was doing earlier and hence, the Tribunal ought to have adopted multiplier method and awarded compensation for future loss of income. The Tribunal has not awarded any amounts towards loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, attendant charges and transportation are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 1st respondent contended that the Tribunal considering the entire materials on record, has awarded a sum of Rs.2,97,913/- as compensation to the appellant, which is not meagre and prayed for dismissal of the appeal.



7.The learned counsel appearing for the 2nd respondent-Transport Corporation contended that the Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 60% to 55% on the ground that disability assessed by Doctor may vary to some extent. Hence, the appellant is not entitled to compensation for 60% disability. The appellant has not proved that she suffered functional disability and lost her entire earning capacity. Hence, she is not entitled to any amount towards future loss of income by adopting multiplier method. The Tribunal considering the nature of injuries and disability suffered by the appellant, has awarded a sum of Rs.2,97,913/- as compensation to the appellant, which is 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 1st respondent and the learned counsel appearing for the 2nd respondent-Transport Corporation and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the case of the appellant that in the accident she sustained injuries on her right lower leg, diffused swelling on left lower leg, bilateral fracture tibia with fracture maxilla and mandible. P.W.2/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.A9/disability certificate to that effect. The Tribunal reduced the percentage of disability from 60% to 55% on the ground that disability assessed by Doctor may vary to some extent. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.A9/disability certificate. Further, the reason given by the Tribunal for reducing the percentage of disability from 60% to 55% is not correct. Therefore, the appellant is entitled to compensation for 60% disability. The accident is of the year 2006 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- (Rs.2,000/- X 60% of disability). The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to any compensation towards loss of earning capacity by adopting multiplier method.

10.It is the contention of the appellant that at the time of accident, she was aged 20 years, doing Saree and Readymade Clothes Business and was earning a sum of Rs.6,000/- per month. The appellant has not produced any documentary evidence to prove



her avocation and income. The accident occurred in the year 2006. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.6,000/- per month as claimed by the appellant is fixed as her notional income. The appellant has taken treatment as inpatient at Hosmat Hospital, Bangalore for 19 days from 03.08.2006 to 17.08.2006 and again from 20.02.2009 to 23.02.2009. Due to the injuries sustained by the appellant in the accident, she would not have attended her work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.18,000/- (Rs.6,000/- X 3 months). Considering the nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.10,000/- each as the amounts awarded by the Tribunal are meagre. Considering the nature of injuries and disability suffered by the appellant, she is entitled to a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads 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	1,10,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Medical expenses	1,58,763/-	1,58,763/-	Confirmed
4.	Transportation	3,150/-	3,150/-	Confirmed
5.	Extra nourishment	5,000/-	10,000/-	Enhanced
6.	Loss of Income	3,000/-	18,000/-	Enhanced
7.	Attendant charges	1,000/-	10,000/-	Enhanced
8.	Damages to clothes	1,000/-	1,000/-	Confirmed
9.	Canteen Expenses	1,000/-	1,000/-	Confirmed
10.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.2,97,913/-	Rs.3,46,913/-	Enhanced by Rs.49,000/-



11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,97,913/- is hereby enhanced to Rs.3,46,913/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit, excluding interest for the default period from 06.04.2009 to 26.07.2010. The 2nd 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.1762 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. 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 for interest on the award amount for the default period as per the order of this Court dated 23.09.2014 made in M.P.No.1 of 2014 in C.M.A.SR.No.8524 of 2014. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+lcc to Mr.K.J.Sivakumar, Advocate Sr.1731
+lcc to Mr.Mukund R.Pandiyan, Advocate Sr.1507

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