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C.M.A.No.1592 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1592 of 2022

N.E.Harshini

...Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(VPM) Limited, Kancheepuram.

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.A.C.T.O.P.No.5973 of 2016, dated 06.01.2021, on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act), Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.R.Balaji

J U D G M E N T



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This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the quantum of compensation granted by the Tribunal in the award dated 06.01.2021 made in M.C.O.P.No.5973 of 2016 on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act).

2. The appellant filed M.C.O.P.No.5973 of 2016 on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act), claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by her in the accident that took place on 07.07.2016.

3. The appellant had filed the claim petition stating that while she was riding as a pillion rider in a motorcycle bearing registration No.TN-10-V-5897 at S.P.Koil Oragadam road, near Appur Village, Kanchipuram District, a bus bearing Registration No.TN-21-N-0811 (offending vehicle) driven by its driver in a rash and negligent manner, hit the motorcycle; that in the said



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accident, the appellant suffered grievous injuries and hence, the respondent/Tamil Nadu State Transport Corporation is liable to pay the compensation.

4. The respondent filed counter statement denying all the averments made by the appellant in the claim petition stating that the driver of the bus drove the same with due care and caution observing traffic rules; and that the accident occurred only due to the negligent act of the rider of the two wheeler bearing registration No.TN-10-V-5897. The respondent had also denied the age, avocation, income of the deceased and nature of injuries sustained by the appellant in the accident; hence stated that the respondent is not liable to pay compensation to the appellant; and that the total compensation claimed by the appellant was highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined three witnesses on her side and marked Exs.P.1 to Exs.P.11. The respondent examined the driver of the bus as R.W.1. No document was marked on the side of the respondent.



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6. The claim petition filed by the appellant herein and the rider of the two wheeler were taken up together and a common award was passed by the Tribunal.

7. The Tribunal after considering the 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 to pay a sum of Rs.7,38,200/- as compensation to the appellant.

8. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that though the doctor/P.W.3 had assessed the disability of the appellant as 30%, the Tribunal had erroneously reduced the percentage of disability to 20% without any basis; that in any event, the Tribunal fixed a very meagre sum of Rs.3,000/- per month as notional income of the appellant which is contrary to the dictum



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of the Hon'ble Apex Court and this Court; that the Tribunal ought to have fixed notional income at Rs.12,000/- per month and hence, prayed for enhancement of compensation.

10. The learned counsel for the respondent per contra, submitted that the award of the Tribunal is just and reasonable and there is no reason to interfere with the quantum of compensation; that the appellant was a minor student aged 17 years at the time of the accident; that hence, the notional income fixed by the Tribunal is reasonable; that the appellant had not established the disability in accordance with law and that the assessment of disability by P.W.3 who did not treat the appellant ought not to have been accepted and hence, prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellant as well as the learned counsel for the respondent and perused the materials available on record.

12. This Court on perusal of the records finds that the Tribunal had



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fixed 15% as functional disability though P.W.3 had assessed the disability of the appellant as 30%. Considering the facts and circumstances of the case, the said finding of the Tribunal cannot be faulted with. However, this Court is of the view that the notional income fixed by the Tribunal at Rs.3000/- per month is meagre. The accident is of the year 2016. This Court is of the view that it would be just and reasonable to fix the notional income of the appellant as Rs.10,000/- per month. In the facts, the appellant is also entitled to enhancement towards future prospects. The appellant was aged 17 years at the time of accident. The multiplier applicable is 18. Thus by fixing 15% disability, the compensation awarded by the Tribunal under the head Disability is calculated as follows:-

$$\text{Rs.10,000} + 4000 (10000 \times 40\%) \times 12 \times 18 \times 15/100 = \text{Rs. 4,53,600/-}$$

13. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus the compensation awarded by the Tribunal is enhanced from Rs.7,38,200/- to Rs.10,83,800/- break-up follows:-



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,08,000/-	4,53,600/-	Enhanced
2.	Medical Expenses	5,10,207/-	5,10,207/-	Confirmed
3.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
4.	Transport to hospital	5,000/-	5,000/-	Confirmed
5.	Extra Nourishment	5,000/-	5,000/-	Confirmed
6.	Pain and sufferings	10,000/-	10,000/-	Confirmed
	Total	7,38,207/- Rounded of to 7,38,200/-	10,83,807/- Rounded of to 10,83,800/-	Enhanced by Rs.3,45,600/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,38,200/- is hereby enhanced to Rs.10,83,800/- together with interest at 7.5% per annum (excluding the default period if any) 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, less the



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amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. 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. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Neutral Citation: Yes / No

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1. The Principal Special Judge
Special Court under E.C. & NDPS Act
Chennai –600 104.
2. The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN, J.

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