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C.M.A.No.1479 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

C.M.A. No.1479 of 2018

K.P.Indhumukhi

... Appellant

**Vs.**

1. M/s.SRM Transport India Pvt. Ltd.,  
No.3, Veera Swamy Street, West Mambalam  
Chennai-600 033

2. HDFC ERGO General Insurance Co. Ltd.  
New No.528, Old No.559  
Anna Salai, Chennai-18

... Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.5693 of 2014 dated 20.03.2018, on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1-Notice Served, No Appearance  
Mr.E.Rajadurai for R2



## **J U D G M E N T**

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This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation awarded in M.C.O.P.No.5693 of 2014 dated 20.03.2018, on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Chennai.

2. The appellant is the claimant. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are the owner and Insurer of the offending vehicle.

3. The case of the claimant is that on 06.07.2014 at about 4.30 hours, while she was travelling as a passenger in a bus belongs to M/s.SRM Transport India Pvt. Ltd., bearing Regn. No.TN-19-B-2253 at GST Road, Villupuam to Tindivanam direction, at Jakkampettai Village, near Iyyanar Koil, the driver of the bus drove it in a very rash and negligent manner endangering public safety and overtook the foregoing Lorry bearing Regn. No.TN-28-B-7369 and hit the Lorry. Thereby, both the vehicles got capsized. In the above said accident, the claimant sustained grievous injuries.



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4. Since the accident had occurred due to the rash and negligent driving of the driver of the said bus, the claimant had filed a claim petition against the owner and Insurer of the said bus i.e. the respondents herein, in M.C.O.P.No.5693 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, claiming compensation of Rs.75,00,000/- stating that due to the injuries, she sustained (i) Type VI Schatzker tibial plateau fracture left (ii) ORIF with PO done (iii). Fracture of both hips (iv) Head injury and (v) Multiple injuries all over the body and thereby, she was unable to do any normal work.

5. Before the Tribunal, the 1<sup>st</sup> respondent/owner of the offending bus was set ex-parte.

6. In order to substantiate the case of the claimant before the Tribunal, on the side of claimant/the appellant herein and the claimant in MCOP No.5715 of 2014, common trial was conducted and totally, 4 witnesses were examined as P.W.1 and P.W.4 and also 33 documents were marked as Ex.P.1 to Ex.P.33. No oral or documentary evidence was let in, on the side of the respondents before the Tribunal.



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7. The Tribunal, after hearing the arguments on both sides and considering the oral and documentary evidence, allowed the claim petition in part and totally awarded a sum of Rs.4,55,800/- (including interim award passed if any) as "just compensation" with costs and interest at the rate of 7.5% per annum, from the date of claim petition till the realization, payable by the 2<sup>nd</sup> respondent/Insurance Company.

8. Now challenging the award of Tribunal, the claimant has filed the present appeal for enhancement of compensation.

9. The learned counsel for the appellant/claimant submitted that the appellant who was working as a Nurse in the Government hospital, Thirunelveli, sustained grievous injuries and 50% partial permanent disability due to the accident. Further, she also sustained multiple fractures and therefore, she was not in a position to do even normal work and that she required assistance of other persons, whereas, the award under the head of "future amenities", had not been considered by the Tribunal. He further submitted that during the relevant point of time, Rs.4,000/- per percentage of



disability was adopted while calculating the compensation for disability, whereas, the Tribunal has adopted only Rs.3,000/- per percentage which warrants interference. Further, though the Doctor has issued Disability Certificate assessing the disability at 50%, the Tribunal has fixed the disability only at 45% and considering the nature of injuries and the disability sustained by the appellant, the Tribunal ought to have fixed 50% disability. Therefore, the award passed by the Tribunal does not reflect the "just compensation" and it is on the very lower side. Therefore, the appeal is filed for enhancement of compensation.

10. The learned counsel for the 2<sup>nd</sup> respondent/Insurance Company submitted that the impugned Award of the Tribunal is substantiated by the records and thus, it is the "just compensation" and it needs no interference from this Court.

11. Heard the learned counsel for the appellant/claimant and the learned counsel for the 2<sup>nd</sup> respondent/Insurance Company and perused the entire materials available on record.



12. The accident is not in dispute. The injuries alleged to have been sustained by the claimant is also not in dispute. The insurance coverage and liability are also not disputed. The only dispute is with regard to the quantum of compensation awarded by the Tribunal.

13. On a perusal of the oral and documentary evidence including the medical records, this Court is of the opinion that the Tribunal should have fixed disability of the injured/claimant at 50%. Further, as stated by the learned counsel for the appellant/claimant, during the relevant point of time, Rs.4,000/- was adopted per percentage of disability. Therefore, instead of Rs.1,35,000/- a sum of Rs.2,00,000/- (Rs.4,000/- x 50%) is hereby granted towards compensation for “disability”.

14. Insofar as loss of earning is concerned, the appellant/claimant is stated to be a Nurse working in a Government Hospital. Since the appellant/claimant was a Government Servant, she would have not incurred loss of income and she has also not produced any records to show as to how many days she availed leave on loss of pay due to the accidental injury and she lost income during the leave period. Therefore, the compensation under the head of "loss of income" does not arise at all. Hence, the Award of



Rs.47,050/-, granted by the Tribunal under the head of "loss of income" is set aside.

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15. Accordingly, the impugned award passed by the Tribunal is re-worked as follows:-

| S.No. | Particulars                 | Amount Awarded by the Tribunal | Amount awarded by this Court | Award confirmed or enhanced or granted or reduced or set aside |
|-------|-----------------------------|--------------------------------|------------------------------|----------------------------------------------------------------|
| 1     | Compensation for disability | Rs.1,35,000/-                  | <b>Rs.2,00,000/-</b>         | <b>Enhanced</b>                                                |
| 2     | Pain and Sufferings         | Rs.45,000/-                    | Rs.45,000/-                  | Confirmed                                                      |
| 3     | Loss of Income              | Rs.47,050/-                    | <b>Nil</b>                   | <b>Set aside</b>                                               |
| 4     | Transport to Hospital       | Rs.5,000/-                     | Rs.5,000/-                   | Confirmed                                                      |
| 5     | Extra Nourishment           | Rs.45,000/-                    | Rs.45,000/-                  | Confirmed                                                      |
| 6     | Medical Expenses            | Rs.1,63,700/-                  | Rs.1,63,700/-                | Confirmed                                                      |
| 7     | Nursing Assistant           | Rs.15,000/-                    | Rs.15,000/-                  |                                                                |
|       | <b>Total</b>                | <b>Rs.4,55,750/-</b>           | <b>Rs.4,73,700/-</b>         |                                                                |
|       | <b>Total rounded off</b>    | <b>Rs.4,55,800/-</b>           | <b>Rs.4,73,700/-</b>         | <b>Enhanced</b>                                                |

16. The award of the Tribunal is modified by enhancing the compensation amount from Rs.4,55,800/- to Rs.4,73,700/-.



17. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.4,73,700/- to the credit of M.C.O.P.No.5693 of 2014, on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, with cost and interest at the rate of 7.5% per annum, from the date of claim petition till the realization, as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

19. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.



20. In the result, this Civil Miscellaneous Appeal is partly allowed.

Consequently Connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

31.07.2023  
(1/2)

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1.The Motor Accident Claims Tribunal (Special Sub Judge)  
Tiruvannamalai.

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



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**P.VELMURUGAN. J.**

ksa-2

C.M.A. No.1479 of 2018

31.07.2023  
(1/2)