



C.M.A No.1746 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.1746 of 2022

D.Kasiammal

... Appellant

Vs.

The Managing Director
Metropolitan Transport Corporation
Pallavan House
Chennai - 600 002

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2019 passed in M.C.O.P. No.5114 of 2015 on the file of Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya

For Respondent : Mr.A.Vinothraj



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JUDGMENT

The appellant herein/claimant in M.C.O.P. No.5114 of 2015 on the file of Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai, has approached this court seeking enhancement of compensation awarded to her for the injuries she had suffered. On 12.05.2015, while boarding the bus belonging to the respondent corporation, the claimant fell down and suffered injuries owing to the negligence of the driver of the bus in moving it without care. The appellant suffered fracture to her ankle and it was surgically set right. She has not appeared before a Medical Board but PW2, in his testimony admits that he did not treat her and had issued Ext.P7 - certificate wherein he has indicated the percentage of disability at 35%. The appellant is a flower vendor and the Tribunal had treated the disability at 5% functional disability and awarded a sum of Rs.64,350/- towards of loss of earning capacity. In all, the Tribunal had awarded a sum of Rs.1,15,950/- as total compensation. The break-up details is as below:



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1. Pain and sufferings	: Rs. 20,000/-
2. Transport and Extra nourishment	: Rs. 10,000/-
3. Loss of earning	: Rs. 64,350/-
4. Attender charges	: Rs. 6,600/-
5. Loss of amenities	: Rs. 10,000/-
6. Medical Expenses	: Rs. 5,000/-

Total	: Rs.1,15,950/-

2. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant is now before this court.

3. Learned counsel for the appellant submitted that even if the disability suffered by the appellant is not treated as functional disability, she would have been entitled to a higher compensation for her disability. However, the Tribunal has not granted anything for disability and determined the functional disability at 5% and arrived at a sum of Rs.64,350/- as compensation, but awarded it against the head 'loss of earning'. In other words, the Tribunal had gone wrong here in not separately (a) either granting a compensation for disability; or (b) granting any compensation for loss of earning.



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4. The learned counsel for the respondent submitted that PW2 is a staff witness and who himself has admitted that he has not treated the victim.

5. Since the appellant was not before a Medical Board, this court is constrained to scale down the percentage of disability to 25% but awards compensation at Rs.5,000/- for every percentage of disability. Accordingly the compensation for permanent disability is assessed at Rs.1,25,000/- (Rs.5,000 x 25). The Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering, which requires to be increased. Accordingly, the same is increased to Rs.30,000/-. This court awards a sum of Rs.45,000/- (Rs.7,500/- x 6) towards loss of earning. The compensation awarded under some of the conventional and non-conventional heads requires interference. The modified compensation break-up is as below:

1. For permanent disability	: Rs.1,25,000/-
2. Pain and suffering	: Rs. 30,000/-
3. Loss of earning	: Rs. 45,000/-
4. Transport and Extra nourishment	: Rs. 15,000/-
5. Attender charges	: Rs. 10,000/-



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6. Loss of amenities	: Rs. 10,000/-
7. Medical Expenses	: RS. 5,000/-

Total	: Rs.2,40,000/-

6. To conclude, this appeal is partly allowed and the compensation payable is increased from Rs.1,15,950/- to Rs.2,40,000/- which this court directs the respondent corporation to pay with interest at the rate of 7.5% per annum less interest for 1099 days (delay in filing the appeal) less any amount already deposited by the respondent/transport corporation, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/claimant is now required to pay additional court fee on the enhanced value of the compensation. No costs.

30.11.2023

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accidents Claims Tribunal,



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(V Small Causes Court), Chennai.
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N.SESHASAYEE, J.

Asr

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