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C.M.A. No.1891 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

**C.M.A.No.1891 of 2023**

Smt. Vasuki, Wife of Durai,  
Hindu, aged 36 years,  
No. 1810, New Kanniamman Street,  
D Block, 8<sup>th</sup> Street, Veerapuram,  
Chennai – 600 055.

....Appellant/Petitioner

Vs.

The Managing Director,  
Metro Transport Corporation,  
Having its office at  
Pallavan House, Anna Salai,  
Chennai – 600 002.

.... Respondent/Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No. 297 of 2016 dated 14.12.2021, on the file of Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur at Poonamallee as prayed for with interest and cost.

For Appellants : Mr.K.Varadha Kamaraj.



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For Respondent : Ms. M.Murali Vinodh

## JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the quantum of compensation granted by the Tribunal in the award dated 14.12.2021 made in MCOP.No.297 of 2016 on the file of the Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur at Poonamallee

2.The appellant/claimant filed MCOP.No.297 of 2016 before the Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur at Poonamallee claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in a road accident that took place on 02.04.2016.

3. According to the appellant/claimant, on 02.04.2016 at about 17.10 hrs., when the appellant was waiting for the bus in Avadi Bus Stand, the



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Transport Corporation Bus bearing Regn.No.TN-01-N-7885, which was driven by its driver in a rash and negligent manner, hit against the appellant, due to which, she sustained right clavicle fracture, multiple ribs fractures with lung contusion, right iliac fracture and multiple and grievous injuries all over the body. Hence the appellant filed a claim petition against the respondent/Transport Corporation claiming compensation of Rs.6,00,000/-.

4. The respondent filed counter denying the averments made by the appellants in the claim petition, including the manner of accident. According to the respondent, the driver of MTC drove the bus with due care and caution and he was not rash and negligent at the time of accident. The driver of the bus, in order to proceed for the next trip, intended to stop the bus at the bus terminus, but before the bus reached the bus bay, a group of passengers were rushing towards the bus intending to occupy the seats and on seeing the same, the bus driver applied brake and stopped the bus facilitating the passengers to board the bus freely. But the appellant, who was trying to board the bus lost her grip and fell down and sustained injuries. The accident had occurred only on the negligent act of the appellant. Hence, the respondent is not liable to



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pay any compensation to the appellant. The respondent also denied the nature of injuries, period of treatment and alleged disability. The total compensation claimed by the appellant is highly excessive and thus prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined herself as PW1 and marked five documents viz., Exs.P.1 to Exs.P.5. On the side of the respondent the driver of the bus was examined as RW1 and no document was marked.

6. The Tribunal, considering the evidence and documents filed on the side of the appellant, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.1,64,000/- as compensation to the appellant. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

7. The Learned counsel for the appellant submitted that the award of



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the Tribunal is meagre under all the heads and requires enhancement. The Tribunal had awarded Rs.2000/- per percentage of disability although the accident took place in the year 2016 and that the Tribunal had fixed the monthly income notionally at Rs.5,000/- which is low and prayed for enhancement.

8. The learned counsel appearing for the respondent submitted that the award of the tribunal under all the heads are just and reasonable and prayed for dismissal of the appeal.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

10. The only question to be decided in the instant appeal is whether the tribunal had awarded just and reasonable compensation.

11. It is seen from the records that the Medical Board had assessed the



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disability of the appellant at 20% and issued Ex.P.5 disability certificate.

The tribunal ought to have awarded Rs.5,000/- per percentage of disability considering the fact that the accident took place in the year 2016. Hence the compensation awarded under the head disability is enhanced from Rs.60,000/- to Rs.1,00,000/- by granting Rs.5,000/- per percentage of disability. (Rs.5000 x 20% per percentage of disability = Rs.1,00,000/-)

12. As regards the amount awarded under the head loss of earning, the Tribunal fixed a meagre notional income of Rs.5,000/-. However, on facts, this court is of the view that it will be just and reasonable to fix Rs.10,000/- as the notional monthly income considering the evidence on record and the year of accident. The appellant would have lost income for a period of three months considering the nature of injuries. Hence the amount awarded under the head loss of earning is enhanced from Rs. 10,000/- to Rs. 30,000/- (Rs.10,000 x 3 = Rs.30,000/-)

13. The appellant was in the hospital for nearly 12 days, hence the attendant charges is enhanced from Rs. 3,000/- to Rs. 10,000/-. Considering



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the nature of fractures suffered by appellant namely Rib Fracture on either side, fracture on the right clavicle and right iliac fracture, this court is of the view that the compensation awarded under the head pain and sufferings can be enhanced from Rs.25,000/- to Rs.50,000/-.

14. As regards, the compensation awarded under the heads of transport to hospital, extra nourishment, loss of damage for clothes and articles, loss of amenities, this court is of the view that the tribunal had awarded just and reasonable amount. Therefore, the compensation awarded by the tribunal under such heads are hereby confirmed.

15. The compensation awarded by the tribunal in MCOP and the compensation awarded by this Court in CMA are tabulated as follows;

| <b><i>S.No.</i></b> | <b><i>Heads</i></b>                     | <b><i>Amount awarded<br/>by tribunal</i></b> | <b><i>Amount awarded<br/>by this court</i></b> |
|---------------------|-----------------------------------------|----------------------------------------------|------------------------------------------------|
| 1                   | Transport to Hospital                   | Rs. 5,000                                    | Rs. 5,000                                      |
| 2                   | Extra Nourishment                       | Rs.10,000                                    | Rs. 10,000                                     |
| 3                   | Loss of Damage for clothes and articles | Rs. 1000                                     | Rs. 1,000                                      |
| 4                   | Pain and sufferings                     | Rs. 25,00                                    | Rs. 50,000                                     |
| 5                   | Loss of amenities                       | Rs.50,000                                    | Rs. 50,000                                     |



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| <i>S.No.</i> | <i>Heads</i>     | <i>Amount awarded<br/>by tribunal</i> | <i>Amount awarded<br/>by this court</i> |
|--------------|------------------|---------------------------------------|-----------------------------------------|
| 6            | Attender charges | Rs. 3,000                             | Rs. 10,000                              |
| 7            | Loss of earning  | Rs. 10,000                            | Rs. 30,000                              |
| 8            | Disability fixed | Rs. 60,000                            | Rs.1,00,000                             |
|              | <b>Total</b>     | <b>Rs.1,64,000</b>                    | <b>Rs.2,56,000</b>                      |

16. In the result,

- the Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the tribunal at Rs.1,64,000/- is enhanced to Rs.2,56,000/- with interest at the rate of 7.5% as awarded by the tribunal.
- The respondent is directed to deposit the compensation awarded by this Court, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order along with interest and costs as awarded by the tribunal @ 7.5% from the date of petition till the date of deposit. (excluding the default period, if any).
- It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.92,000/-, enhanced by this Court as per the order of this Court dated 25.07.2023, made in C.M.P. No.



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- On such deposit, the appellant shall be entitled to withdraw the same.
- The appellant is directed to pay the necessary court fee, if any, on the enhanced award amount.

**29.08.2023**

msr

Index:yes

Speaking order/non speaking or

Neutral Citation: Yes / No

To

1. The Managing Director,  
Metro Transport Corporation,  
Having its office at  
Pallavan House, Anna Salai,  
Chennai – 600 002.

2. The Motor Accident Claims Tribunal,  
(II Additional District and Sessions Judge),  
Tiruvallur at Poonamallee

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

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**SUNDER MOHAN, J**

msr

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