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C.M.A.No.1824 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **K. RAJASEKAR**

C.M.A.No.1824 of 2021

Valarmathi

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Coimbatore.

... Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.03.2020 passed in M.A.C.T.O.P.No.379 of 2018 on the file of the Motor Accident Claims Tribunal and Special Sub Judge, Tiruvannamalai.

For Appellant : Mr.M.Malar

For Respondent : M/s.Murali Vinodh



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in the Judgment and Decree passed in M.A.C.T.O.P.No.379 of 2018, dated 17.03.2020 on the file of the Motor Accident Claims Tribunal and Special Sub Judge, Tiruvannamalai.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case in brief is that on 15.01.2018, the claimant herein was travelling to karur from Tiruvannamalai in the public Transport bus belongs to the respondent herein. At about 1.00 a.m, when the bus was running near Harur, Rayappan Kottai, the driver of the bus driven the same negligently dashed on the rear side tree. The appellant had sustained fracture below the left knee and also sustained severe injuries all over the body. She was immediately admitted to Government hospital. Thereafter, she has filed claim petition under Section 166 of the Motor Vehicles Act seeking compensation Rs.7,00,000/-.



4. The learned counsel for the respondent contested the claim petition and contented that, the driver of the respondent is not responsible for the accident and the respondent is not liable to pay any compensation.

5. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.5 and Ex.C.1 - disability certificate were marked. On the side of the respondents, no witnesses were examined and Ex.R.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the Transport Corporation bus is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.1,85,623/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization and fixed the liability on the part of the Transport Corporation to pay compensation to the claimant.

7. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.



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8. The learned counsel for the claimant submitted that claimant herein sustained both bone fracture and the Medical Board has assessed 30% permanent disability. The Tribunal ought to have adopted multiplier method, treating the injury as a functional permanent disability but the Tribunal has awarded compensation by adopting percentage method. She also relied on the *Judgment of the Apex Court in Raj Kumar Vs. Ajay Kumar & Another reported in MANU/SC/1018/2010* in support of her contention regarding adoption of multiplier method. She had further submitted that the Tribunal has not properly fixed the compensation under various heads and prays to enhance the compensation.

9. The learned counsel for the Transport Corporation submitted that there is no evidence placed on record to prove the avocation of claimant, more particularly, that she is a Tailor. Her disability has not caused any loss of her earning capacity, hence the Tribunal has adopted percentage method in granting compensation and the Tribunal has awarded a just compensation, hence prays to confirm the award.



10. I have considered the submissions made on both sides and perused the materials available on record.

11. The Tribunal has accepted the claimant's case of disability based on the wound certificate, marked as Ex.P.2 and Ex.C.1- disability certificate issued by the Medical Board and treated the disability as permanent disability and awarded compensation by adopting percentage method by granting Rs.3,000/- per percentage of disability. According to her, she is working as a Tailor in Rally Exports. However, she has not examined any witness, who issued the salary certificate or any other documentary evidence to prove her avocation or income. She has not produced the discharge summary to show the diagnosis and procedure done to her in relating to her injury. In the absence of discharge summary and other medical records, this Court is unable to conceive any facts whether this injury has incapacitated her from continuing the work. Ex.P.2 - wound certificate shows that she has undergone treatment in the Government hospital and Ex.C.1 - disability certificate, which shows that the claimant has sustained 30% permanent disability. In *Raj Kumar Vs. Ajay Kumar and Ors.* cited supra, in paragraph 9, has held as under:



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"Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

12. In this case, there is no evidence with regard to avocation of the claimant. Medical board opined that, she has sustained both bone fracture, which is partial permanent disability to the extent of 30% of part of the body. There is no evidence placed on record to show that this injury has prevented her from doing or carrying out her regular activities. Since there is no evidence placed on record to show the impact of the injury to her, the Tribunal has rightly held that injury has not caused any loss of earning capacity. This Court is of the view that awarding compensation by following percentage method would be appropriate. This Court in



M.Chinnathambi vs. S. Deepa and another reported in ***[CDJ 2020 MHC***

1013; 2020 (1) TNMAC 617], has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016 onwards, hence, considering the date of accident and also the age of the claimant herein, this Court is inclined to modify the award to Rs.5,000/- per percentage. Hence, the total compensation granted under the disability is modified to Rs.1,50,000/- (Rs.5,000/- x 30% of disability).

13.The Tribunal considered the nature of injuries sustained and held that the claimant would not have done any work for the period of 3 months, thereby granted Rs.21,000/- (Rs.7,000/- X 3) as loss of income during the treatment period. However, considering the age, this Court is of the view that the monthly notional income fixed by the Tribunal is on the lower side and the same is enhanced to Rs.15,000/- per month, accordingly, this Court is inclined to award Rs.45,000/- (Rs.15,000/- X 3) as loss of income during the treatment period. Whereas the other heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.



14. Accordingly, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

Sl. No .	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Permanent disability	90,000/-	1,50,000/-	Enhanced
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed
3.	Loss of amenities	20,000/-	20,000/-	Confirmed
4.	Extra nourishment and damages	15,000/-	15,000/-	Confirmed
5.	Attender charges	5,000/-	5,000/-	Confirmed
6.	Transport charges	3,000/-	3,000/-	Confirmed
7.	Loss of income	21,000/-	45,000/-	Enhanced
8.	Medical expenses	1,623/-	1,623/-	Confirmed
	Total	Rs.1,85,623/-	Rs.2,69,623/-	Enhanced Rs.84,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,85,623/- is hereby enhanced to **Rs.2,69,623/- [Rupees Two Lakhs Sixty Nine Thousand Six Hundred and Twenty Three only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the



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credit of M.C.O.P.No.379 of 2018 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai. 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 Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/ claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

29.11.2023

rjr

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal, Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.



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