



C.M.A.No.3651 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3651 of 2021

Mrs. Vijayachitra

... Appellant/petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation (Chennai) Limited,
Pallavan House, Anna Salai,
Chennai – 600 002.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 16.12.2019, made in M.C.O.P.No.3637 of 2016, on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C & NDPS Act, Chennai.

For Appellant : Mr. J. Ravi Kumar

For Respondent : Mr. Anton Dhanasekaran



JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking quantum of compensation awarded in M.C.O.P. No.3637 of 2016, dated 16.12.2019 on the file of the Motor Accident Claims Tribunal, Principal Special Court, Special Court under E.C and NDPS Act, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 09.04.2016 at about 17.35 hours, she was travelled as a passenger in a Metropolitan Transport Corporation bus bearing Registration No.TN 01 N 8650 running from T.Nagar to Kancheepuram in route No.579, while she has boarded the bus, the bus driver told her to get down from the bus because the bus will go via Tambaram and not via Poonamallee and while she was getting down from the bus, the driver suddenly started the bus in negligent manner, hence the petitioner fell down from the bus resulting which she sustained severe fracture on her right foot and grievous injuries all over her body. Subsequently, she has come forward with the claim petition seeking compensation for a sum of Rs.32,40,000/-.



4. The respondent - Transport Corporation has contested the claim on the ground that the compensation claimed by the claimant based on the injuries and disability claimed is on the higher side. Further contended that she has suddenly getting down from the running bus, which resulted in accident.

5. The Tribunal, after considering the evidences placed on record has held that the driver of the bus has suddenly started the bus, which resulted in causing severe fracture to the claimant, that the Transport Corporation is liable to pay the compensation and also the Tribunal has quantified the compensation, awarded a sum of Rs.12,33,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded, the claimant has approached this Court seeking enhancement of compensation. The respondent - Transport Corporation has not filed any appeal for challenging the same.



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7. The learned counsel for the claimant has submitted that the claimant has been assessed for disability at 70% by the Medical Board and accordingly the Disability Certificate was also issued to her. However, the Tribunal without properly appreciating the same, fixed the disability at 50% as loss of earning capacity, which is not proper and the same requires modification. Further he submits that notional income fixed by her is also on the lower side and the compensation awarded under other heads are also requires modification.

8. Per contra, the learned counsel for the Transport Corporation submits that the Tribunal based on the evidences placed on record has properly fixed the notional income as well as the compensation awarded. Hence prays to confirm the award.

9. I have considered the rival submissions made on both sides and also perused the records.

10. Before the Tribunal, the claimant was not able to produce any evidence to show that she was a sales girl as contended by her however, the Tribunal treating her as a housewife, fixed the notional income



of Rs.10,000/- per month. The accident in this case was happened on 09.04.2016 and since the claimant is being a working women, fixing of Rs.10,000/- as monthly income is on the lower side and this Court is of the view that the same has to be revised as Rs.13,000/-, by following the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* by adopting the cost of index, fixed the notional income of the person who were not able to prove the income.

11. The claimant has marked the Disability Certificate issued by the Department of Rehabilitation, the Government Institution of Rehabilitation Medicine. The Certificate of Disability was issued as per Rule 18(1) of the Disability Persons Act and this Certificate is a conclusive proof to show that the claimant has sustained 70% disability. The Disability Certificate was issued based on the assessment made by the appropriate Authorities.

12. In the Judgment of the Apex Court in *Raj Kumar vs. Ajay kumar & Another [AIR Online 2010 SC 125 : AIR Online 2010 SC 144]* various guidelines in deciding the disability and awarding



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compensation has been issued. It is held that the loss of earning capacity has to be assessed based on the avocation, the nature of injuries sustained by her and the major issue to be decided while assessing loss of earning capacity is whether the claimant/injured would be in a position to continue her earlier avocation without any assistance. If she could continue her earlier avocation or she has to change her avocation, the extent to the loss of earning capacity has to be assessed and the compensation is to be awarded accordingly. The claimant is not immobilised and she can do some alternative work and eke out her income. Based on the disability and its impact, earning capacity is to be assessed to the extent of 60%. The age of the injured is 31 years at the time of accident and considering her age, multiplier '16' is adopted as per the Judgment of the Apex Court in ***Sarla Varma and Others vs. Delhi Transport Corporation and Another [2009 (2) TNMAC 1 SC]***. Accordingly, the loss of income is calculated as follows:
 $[13000 \times 12 \times 16 \times 60\%] = \text{Rs.}14,97,600/-$.

13. The Tribunal has not awarded compensation under the head future prospects and as per the Judgment of the Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation [AIR 2020 SC***



4284], the claimant is also entitled for 40% of Rs.14,97,600/- ie., a sum of Rs.5,99,040/- is awarded under the head future prospects. The Tribunal has awarded a sum of Rs.3,000/- under the head transport to hospital and attenders help and other miscellaneous help and this Court is of the view that the same is not proper and it must be granted separately and accordingly, under the head Transportation Charges a sum of Rs.12,000/- has been awarded.

14. On perusal of the Discharge Summary, shows that she was admitted into the Institute of Orthopaedics, Rajiv Gandhi Government Hospital, Chennai, it shows that she was taken inpatient treatment for 47 days. Since this Court has awarded compensation under the head loss of earning capacity and future prospects, the claimant is not entitled for any compensation under the head loss of income during the treatment period however, she is entitled for attender charges for her continuous treatment during inpatient and subsequent period. Accordingly, the attender charges during the treatment period and subsequent period a sum of Rs.50,000/- is awarded as per the Judgment passed by the Hon'ble Apex Court in **Kajal vs. Jagdish Chand** [AIR 2020 SC 776 : AIR Online 2020 SC 136] since the



claimant requires assistance in future also. It is also submitted by the counsel for the claimant that since she has lost her leg and she is entitled for compensation under the head fixing artificial limb. However, the medical bills for fixing the artificial limb was also marked before the Tribunal as Ex.P6 and the Tribunal has properly appreciated the same and has granted compensation under the head medical bills a sum of Rs.1,20,000/- and this Court is of the view the same is just and reasonable. The Tribunal has awarded a sum of Rs.50,000/- under the head pain and sufferings and this Court finds no infirmity in the said finding and the same is hereby confirmed. As far as the compensation awarded under heads are concerned, the same are hereby confirmed.

15. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning Capacity	Rs.9,60,000/-	Rs.14,97,600/-	Enhanced
2.	Medical Expenses	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
3.	To and fro hospital, attenders help and other	Rs.3,000/-	Rs.12,000/-	Enhanced



	miscellaneous expenses/Transportation charges			
4.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
5.	Loss of Amenities	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
6.	Future Prospects	---	Rs.5,99,040/-	Granted
7.	Attender Charges	---	Rs.50,000/-	Granted
	Total Compensation	Rs.12,33,000/- -	Rs.24,28,640/-	Enhanced by Rs.11,95,640/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,33,000/- is hereby enhanced to Rs.24,28,640/- [Rupees Twenty Four Lakhs Twenty Eight Thousand Six Hundred and Forty only] together 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 award amount now determined 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 credit of M.C.O.P.No.3637 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Special Court, Special Court under E.C & NDPS Act, Chennai. On such deposit, the appellant is permitted to



C.M.A.No.3651 of 2021

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 without any formal application. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

19.12.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Principal Special Sub Judge,
Special Court under E.C & NDPS Act,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,

10/12



High Court,
Madras.

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C.M.A.No.3651 of 2021

K.RAJASEKAR,J.

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C.M.A.No.3651 of 2021



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C.M.A.No.3651 of 2021

19.12.2023