BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.01.2023

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THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.843 of 2022

Mallika ... Appellant/Petitioner

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam. ... Respondent/Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to allow this appeal awarding an enhanced compensation of Rs.13,00,000/- over and above the compensation awarded by Motor Accidents Claims Tribunal (Sub-Court), Pudukottai, in M.C.O.P.No.7 of 2016 dated 30.04.2021, with costs.

For Appellant : Mr.N.Balakrishnan
For Respondent : Mr.A.V.B.Krishnakanth

JUDGMENT

This appeal is filed by the claimant claiming enhance compensation for the injuries sustained by her in a motor accident, which occurred on 17.01.2015.

2.According to the appellant, while she was alighting from the Transport Corporation Bus, the driver of the Transport Corporation Bus without noticing the same, drove the Bus in a rash and negligent manner as a result of which, she fell down and the left side wheel of the Bus ran over her legs and caused grievous injuries. As a result of the injuries, both the legs of the appellant were amputated above knee and therefore, the appellant filed a claim petition, claiming a sum of Rs.2 crore as compensation for 100% disability sustained by her in the accident.

3.The Transport Corporation filed a counter affidavit disputing the nature of the accident and submitted that the accident occurred only because of the negligence of the appellant in trying to alight from the bus when the driver was negotiating a speed breaker. The Transport Corporation further disputed the quantum of compensation claimed by the appellant. On these and other grounds, the Transport Corporation prayed for dismissal of the claim petition.

4.The Tribunal after perusing the entire evidence on record awarded a sum of Rs.16,59,126/- along with interest at the rate of 7.5% per annum as compensation.

5.Not satisfied with the award passed by the Tribunal, the claimant has filed this appeal.

6.The learned counsel for the appellant submits that the Tribunal has rightly assessed the disability at 100% on the basis of Accident Register-Ex.P.3, Discharge Summary-Ex.P.4, Wound Certificate-Ex.P.7 and on the basis of the evidence of Doctor, who was examined as P.W.3 and the Disability Certificate given by him under Ex.P.16. According to the learned counsel, even though the Tribunal adopted multiplier method for 100% disability the Tribunal erred in fixing the monthly income of the appellant at Rs.2,000/- per month only. According to the counsel, the income assessed by the Tribunal on the basis that the appellant is a home maker and was not able to prove the income is unsustainable in the teeth of the judgment of this Court in **Bhuvaneswari Vs. Mani & United India Insurance Co. Ltd.,** reported in **2020 (2) TN MAC 389.** As regards the age of the appellant, the counsel submitted that the Tribunal erred in fixing the age at 50 years on the basis of the Doctor's evidence even though the age given in the claim petition was 45 years. The learned counsel further submitted that the award towards pain and suffering was meagre and needed to be enhanced. It was therefore contended that this was a fit case for enhancing the compensation.

7.On the other hand, the learned counsel for the respondent relying on the judgment of the Hon'ble Supreme Court in **Kirti Vs Oriental Insurance Company Limited,** submitted that the said judgment has laid down guidelines to be adopted to determine the notional income for Home Makers. The learned counsel referred to the following paragraph of the said judgment:-

> *“10.So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earring any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimant, who ought to have given data for determination of compensation, did not assist in any manner by providing the date for estimating the value of services rendered by such housewives,. But, even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs. 36,000/- per annum....”*

8.The learned counsel submits that the income fixed by the Tribunal is appropriate and the same does not call for any interference, and further submits that the Tribunal erred in fixing the age of the appellant at 50 years which was against the evidence of the Doctor. The counsel therefore submits that the appeal has to be rejected.

9.I have heard both the counsels and perused the materials placed on record.

10.The only point to be considered in this appeal is **whether the appellant is entitled for enhanced compensation.**

11.At the outset it is to be noted that the appeal is filed by the appellant/claimant seeking enhancement of compensation and the respondent/Transport Corporation has not filed any appeal against the award of the Tribunal.

12.On the aspect of the income, I am of the view that the income assessed by the Tribunal is grossly inadequate. The contribution of a woman to the household is invaluable. The utility of a home maker in the discharge of her multifarious tasks while donning the different caps she wears as a mother, wife, Daughter-in-law, tutor etc., are invaluable and cannot be computed in material terms. When a home makers suffers total disability, she not only suffers physical pain but undergoes mental agony for not contributing to the family. Keeping these aspects in view, the compensation has to be arrived at in the present case. The appellant lost both her legs and suffered 100% disability. As a home maker, she has no documents to prove her income. In the present case, following the judgment of this Court in the case of ***Andal Vs Avinav Kanan*** *reported in* ***2019 (1) TN MAC 54 (DB).*** The income of the deceased is calculated as follows:-

The accident is of the year 2015 and therefore, the income of the appellant can safely be taken at Rs.12,093/- (6500 x 240/129 = Rs.12,093/-). If 10% is added towards future prospects, then the income would be Rs.13,302/-. After deducting 50% towards the appellant's personal expenses, the monthly income of the appellant comes to Rs.6651/-. The total loss of income is therefore assessed at Rs.10,37,556/-(6651x12x13= Rs.10,37,556/-).

13.In my view, the award of Rs.10,000/- towards pain and suffering is very much on the lower side and the same is liable to be enhanced. The appellant is a home maker and she has lost both her legs in the accident. Apart from the physical pain suffered by her, her mental agony in having become a liability to the family cannot be lost sight of. Hence, the compensation under the head of pain and suffering is enhanced to Rs.2,00,000/-. The compensation of Rs.13,37,126/- awarded towards Medical Expenses in the absence of any dispute regarding the genuineness of the same is not interfered with.

14. Accordingly, the award of the Tribunal in M.C.O.P.No.7 of 2016 is modified as follows:-

Sl. No.	*Particulars*	*Amount granted by the Tribunal*	*Amount granted by this Court*
1	Pain and suffering	Rs. 10,000/-	**Rs. 2,00,000/-**
2.	Medical Expenses	Rs. 13,37,126/-	Rs. 13,37,126/-
3.	Loss of Income	Rs. 3,12,000 /-	**Rs. 10,37,556/-**
	Total	Rs.16,59,126/-	**Rs.25,74,682/-**

15.In the result, this Civil Miscellaneous Appeal is allowed. The quantum of compensation awarded by the Tribunal is enhanced from Rs.16,59,126/- to **Rs.25,74,682/- (Rupees Twenty Five Lakhs Seventy Fourt Thousand Six Hundred and Eighty Two only)** which shall carry interest at the rate of 7.5% per annum.

16.The respondent/Tamil Nadu State Transport Corporation Limited, is directed to deposit the entire compensation of **Rs.25,74,682/- (Rupees**

Twenty Five Lakhs Seventy Fourt Thousand Six Hundred and Eighty Two only) (if not already deposited) together with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.7 of 2016 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Pudukottai, within a period of twelve weeks from the date of receipt of a copy of this order.

17.On such deposit being made by the Tamil Nadu State Transport Corporation Ltd., the appellant/Claimant herein is at liberty to withdraw the same after following due procedure. There shall be no order as to costs.

04.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal/Sub-Court,
Pudukottai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J

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