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CMA No.3112 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.3112 of 2021

Judgment reserved on 15.02.2024	Judgment pronounced on 23.02.2024
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M.Shobana Sai

...

Appellant

Vs.

The Managing Director

Metropolitan Transport Corporation Ltd.,

Pallavan House, Anna Salai, Chennai – 2 .

...

Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 11.06.2019 in MCOP No.7720 of 2013 on the file of Motor Accidents Claims Tribunal – III Court of Small Causes, Chennai.

For Appellant : Mr.N.Manoharan

For R2 : Mr.K.Moorthy

JUDGMENT

The claim petitioner is the appellant herein seeking enhancement of compensation awarded in MCOP No.7720 of 2013 dated 11.06.2019 on



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the file of Motor Accidents Claims Tribunal – III Court of Small Causes,
Chennai.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the respondent/Transport Corporation and the injuries sustained by the appellant in the road accident are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.

4. On the point of quantum of compensation, heard the counsel for the appellant as well as respondent .

5. During the trial, the injured/claim petitioner examined himself as PW1, employer of the injured/claim petitioner who had issued offer letter Ex.P21 as PW2 and the doctor who treated the appellant and issued Ex.P25-disability certificate was examined as PW3. On the side of the respondent, RW1-conductor of the concerned bus was examined but no documents were marked.



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6. On perusal of Exs.P2 & P3 discharge summaries, this Court finds that the appellant was admitted in Srinivas Priya Hospital and she was treated as inpatient from 29.03.2013 to 01.04.2013 and surgery was conducted on 29.03.2013. Again she was admitted in Right Hospital and she was treated as inpatient from 09.04.2013 to 22.04.2013 and surgery was conducted on 11.04.2013. Dr.Mathiazhagan who issued Ex.P25-disability certificate was examined as PW3. On perusal of the discharge summaries and disability certificate produced by the appellant, the Tribunal has come to the conclusion that the appellant had sustained the following injuries -

- (i) lacerated wound left foot with cellulitis
- (ii) skin necrosis left foot and ankle

for which she underwent a procedure called “Post traumatic sequelae left lower limb skin necrosis left foot & ankle with skin grafting”. For the injuries, PW3-doctor has assessed 30% partial and permanent disability.

7. In view of the above, I find that the Tribunal had rightly assessed the partial and permanent disability at 30% and awarded a sum of Rs.3,000/- per percentage of disability, in toto awarded a sum of Rs.60,000/- towards disability which is just and reasonable and the same is



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hereby confirmed.

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8. The learned counsel appearing for the appellant/claim petitioner would contend that as per the oral evidence of PW2-Karthik, employer of the appellant, just before the accident, his company had issued an offer letter wherein they offered a higher sum as salary to the appellant and had there not been an accident, she could have joined the job and earned more income. This Court is unable to accept the said contention for more than one reason that mere offer letter cannot be a basis to assume that the appellant would have joined the job and have earned more income.

9. It is trite in law that in any claim for compensation, the Court has to assess the compensation on the principles of computation of compensation in respect of acceptable injuries. It can only be as against the reasonable probabilities, compensation has to be granted and not against the fantastic probabilities. Hence, in the light of the ratio laid down by the Hon'ble Supreme Court, I have no hesitation to reject the said contention of the learned counsel for the appellant that had there been no accident, the appellant would have earned more and the same will not form basis of the computation as alleged future income. As per Ex.P24-Income Tax



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particulars which was filed by the appellant on 29.03.2021, the monthly income was shown as Rs.62,500/- and the Tribunal has rightly fixed the same as monthly income and awarded a sum of Rs.93,750/- towards loss of income during for 1 ½ months. Considering the nature of injuries and period of treatment, this Court is of the view that the appellant would not have attended her work atleast for a period of three months. Hence a sum of Rs.1,87,500/- (Rs.62500/- x 3) is awarded towards loss of income for three months. Similarly, the amount awarded by the Tribunal towards future medical expenses and attender charges are enhanced to Rs.25,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they are confirmed. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.4,41,437/- to Rs.5,56,587/-, break-up as follows -

Sl. No	Heads under which the amount is awarded	Amount awarded by the Tribunal – Rs.	Amount awarded by this Court – Rs.
1.	Disability	60,000/-	60,000/-
2.	Pain & Suffering	50,000/-	50,000/-
3.	Extra nourishment	15,000/-	15,000/-
4.	Transport to Hospital	15,000/-	15,000/-
5.	Damages to clothes	500/-	500/-
6.	Attender charges	3,600/-	15,000/-
7.	Medical expenses	1,73,587/-	1,73,587/-



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<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
8.	Future Medical expenses	15,000/-	25,000/-
9.	Loss of income	93,750/-	1,87,500/-
10.	Loss of amenities	15,000/-	15,000/-
	Total	4,41,437/-	5,56,587/-

10. In total, the appellant / claim petitioner is entitled to a sum of Rs.5,56,587/- (Rupees Five Lakhs Fifty Six Thousand Five Hundred and Eighty Seven only).

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.4,41,437/-** to **Rs.5,56,587/-**, to the extent indicated above.

(ii) the respondent/Transport Corporation is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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(iii) on such deposit being made, the claim petitioner/appellant is permitted to withdraw the entire enhanced award amount, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim petitioner/appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

23.02.2024

rgr

Index : Yes/No

Speaking/Non-speaking order

To

1.The III Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.

rgr

Judgment in
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