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C.M.A.Nos.219 of 2024 & 1531 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.219 of 2024 & 1531 of 2023
and
C.M.P.No.15576 of 2023

CMA.No.219 of 2024:

K.Kalaiarasi

...Appellant

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai 600 002.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in MCOP.No.5106 of 2005 dated 17.10.2022 on the file of the Motor Accident Claims Tribunal (III Small Causes Court) Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent : Mr.Anton Dhanasekaran



C.M.A.Nos.219 of 2024 & 1531 of 2023

CMA.No.1531 of 2023:

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai 600 002.

...Appellant

Vs

K.Kalaiarasi

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 17.10.2022 made in MCOP.No.5106 of 2005 on the file of the Motor Accident Claims Tribunal (III Small Causes Court) Chennai.

For Appellant : Mr.Anton Dhanasekaran

For Respondent : Mr.K.Varadhakamaraj

COMMON JUDGMENT

These appeals have been filed by both the Transport Corporation as well as the claimants challenging the negligence and the quantum of compensation awarded by the Tribunal vide order dated 17.10.2022 in MCOP.No.5106 of 2005.



2. The case of the claimant is that on 04.08.2005, while the appellant was about to get down from the MTC Bus bearing Registration No.TN-01-N-3771 through the front door near Kalaigiar Arch Saidapet near Pedestrian, without caution, the driver of the bus had recklessly drove the bus, due to which the appellant had fell down and the rear left side wheel of the bus ran over the appellant's abdomen. As a result, the appellant had sustained grievous injuries. Considering all the aspects the Tribunal had awarded the following compensation:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Disability	60,000
2	Pain and Sufferings	20,000
3	Transportation	2,200
4	Attender Charges	10,800
5	Medical Expenses	12,322
6	Extra Nourishment	7,000
7	Loss of Earnings	7,000
	Total	1,19,322
	Rounded off	1,19,300

3. As far as the CMA.No.219 of 2024 is concerned, the learned counsel appearing for the claimant would submit that due to the aforesaid accident, the claimant had sustained grievous injuries and even the uterus of the claimant was



removed. Therefore, he would request this Court to fix the disability at 30% and award compensation towards disability by applying multiplier method. Further, he would request this Court to re-determine the compensation awarded under the other heads.

4. In reply, the learned counsel for the Transport Corporation would submit that though the uterus of the claimant was removed due to the accident, considering the fact that the claimant was already married, the Tribunal had rightly awarded compensation towards disability and hence, he requests this Court to confirm the same.

5. Heard the learned counsel for the claimant and the Transport Corporation and also perused the materials available on record.

6. In the present case, it is an admitted fact that the uterus of the claimant was removed due to the accident. Thus, considering the fact that the claimant had already got married and also considering the disability assessed by Medical Board at 30%, the Tribunal awarded the compensation as a sum of Rs.2,000/-



per percentage, which since the same appears to be on lower side. Hence, this Court is inclined to fix a sum of Rs.3,000/- per percentage for awarding compensation towards disability. Hence, disability would be calculated as follows:

$$\text{Rs.3,000/- (amount)} + 30\% (\text{disability}) = \text{Rs.90,000/-}$$

7. Further, since the amount awarded by the Tribunal towards Pain and Sufferings, Extra Nourishment and Loss of Earnings are appears to be on lower side, this Court is inclined to award a sum of Rs.30,000/- towards Pain and Sufferings, Rs.12,000/- towards Extra Nourishment and Rs.21,000/- towards Loss of Earnings. That apart, since no amount was awarded towards Loss of Amenities, this Court is inclined to award a sum of Rs.20,000/- for the same.

8. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Disability	60,000	90,000
2	Pain and Sufferings	20,000	30,000



S.No	Particulars	Compensation awarded by the Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
3	Transportation	2,200	2,200
4	Attender Charges	10,800	10,800
5	Medical Expenses	12,322	12,322
6	Extra Nourishment	7,000	12,000
7	Loss of Earnings	7,000	21,000
8	Loss of Amenities	Nil	20,000
	Total	1,19,322	1,98,322
	Rounded off	1,19,300	1,98,300

9. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.1,98,300/-. Accordingly, the award amount stands enhanced from a sum of Rs.1,19,300/- to Rs.1,98,300/-. In all other aspects, the award of the Tribunal stands confirmed.

10. As far as CMA.No.1531 of 2023 is concerned, this appeal has been filed by the Transport Corporation challenging the negligence and liability fixed by the Tribunal.



11. The learned counsel for the Transport Corporation would submit that the claimant had got down from the bus through the front door at Kalaigiar Arch Saidapet near Pedestrian and not at the bus stop. Hence, the accident was purely invited by the claimant and there is no negligence on the part of the bus driver.

12. In reply, the learned counsel appearing for the claimant would submit that the claimant had fell down from the bus only due to the rash and negligent driving of the bus driver and hence, requests this Court to confirm the award passed by the Tribunal.

13. On considering the submissions and on perusing the documents, this Court is of the considered view that the accident occurred only due to the rash and negligent driving of the bus driver. Hence, there is no need for interference with regard to the liability fixed by the Tribunal and the same stands confirmed.

14. In the result, the CMA.No.1531 of 2023 is dismissed the CMA.No.219 of 2024 is partly allowed. The Transport Corporation is directed



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to deposit a sum of Rs.1,98,300/- along with interest and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.5106 of 2005 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. Further, the claimant shall pay necessary Court fee, if any, on the enhanced compensation. Thereafter, the Tribunal is directed to immediately transfer the entire amount to the bank accounts of the claimant by way of RTGS, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs. Consequently, the connected miscellaneous petition is also closed.

20.02.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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KRISHNAN RAMASAMY,J.

nsa

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