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C.M.A.No.3504 and 3577 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.3504 and 3577 of 2021

and

C.M.P.No. 20852 of 2021

Geetha Kandasamy

... Appellant in
CMA No. 3504 of 2021
and Respondent in
CMA No. 3577 of 2021

Vs.

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

... Respondent in
CMA No. 3504 of 2021
and Appellant in
CMA No. 3577 of 2021

PRAYER in both Appeals: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree dated 04.09.2019 passed in M.C.O.P.No. 3036 of 2014 on the file of (Motor Accident Claims Tribunal) Special Sub Court No.1, Small Causes Court, Chennai.

For Claimant : F. Terry Chella Raja

For Transport Corporation : Mr. P. Gajendra Babu
for M/s. Anton Dhanasekaran



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COMMON JUDGMENT

The Claimant and the Transport Corporation have filed separate appeals challenging the award passed in M.C.O.P.No. 3036 of 2014, dated 04.06.2019 on the file of MACT Special Sub Court No.1, Small Causes Court, Chennai.

2. The Transport Corporation filed C.M.A.No.3577 of 2021 challenging the award and also seeking deduction of compensation awarded. The claimant filed C.M.A.No.3504 of 2021 seeking to enhance the compensation awarded by the Tribunal below.

3. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

4. The facts leading to filing of the claim petition are as follows:-

At about 12.15.p.m., the claimant after getting down from the MTC bus was standing on the left side of the Arcot road to reach other side on the road, at that time, bus belongs to respondent Transport Corporation



came in the road in a rash and negligent manner dashed on the Claimant and also dashed on the another MTC bus which resulted in causing greivous injuries to the claimant herein. After taking treatment, the claimant herein seeking compensation for a sum of Rs.12,00,000/- by invoking Section 166 of Motor Vehicle Act .

5. The respondent Transport Corporation has filed a counter affidavit and disputed the claim of the claimant on the ground that she has contributed to the accident and also disputed quantum of compensation claimed by her.

6. After considering the evidence placed on record, the Tribunal accepted the case of the claimant and awarded compensation to a sum of Rs.2,61,450/- along with interest at the rate of 7.5 percent per annum. Aggrieved over the quantum of compensation, the claimant has filed this C.M.A.No. 3504 of 2021 seeking enhancement of compensation. The transport corporation has also filed a C.M.A.No. 3577 of 2021 challenging the entire award.



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7. The learned counsel for the claimant would submit that the claimant has sustained Diffuse degloving injury right elbow with I/C fracture right elbow (Grade II Compound) and Fracture ribs 8th and 9th right and also other multiple injuries. P.W.2 doctor has also assessed the disability is as 40% but without any reason the Tribunal has reduced the same to 20% which is not proper. He further submits that the compensation awarded under the other various heads is also on the lower side and prays to enhancement the compensation.

8. The learned counsel for the Transport Corporation submitted that the claimant after getting down from the bus suddenly crossed the road for the waiting bus, thereby she has contributed to the accident and this was not taken note of the Tribunal and accident had occurred only on the negligent act of the claimant, but the Tribunal has held that the driver of the bus is responsible for the accident. He further submitted that the compensation awarded under various heads are highly excessive, exorbitant and prays to reduce the compensation awarded.



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9.The claimant has examined herself as P.W.1 and according to her that after she got down from the bus and waiting to cross the road and at the same time the another bus came from the same direction rashly driving by its driver and hit on her and also dashed on the another bus. It is also admitted by the Transport Corporation that the driver of the bus is not only dashed on the claimant but also dashed on the another bus which was running before the bus. This fact is sufficient to show that the driver of the bus was rash and negligent in driving the bus. It is a clear case of negligent driving of the bus in the busy city road. Hence this Court is of the view that the Tribunal has rightly held that the driver of the bus is responsible for the accident and finding is hereby confirmed.

10. With regard to the quantum of compensation, the Tribunal has held that the evidence of P.W.2 is that he assessed disability of the claimant after 4 years of injury. Hence percentage fixed by him is on the higher side. I have also gone through the discharge summary and also photos. The discharge summary shows that the she was admitted in the



hospital from 28.04.2014 and discharged on 02.05.2014, wherein it is recorded that she has sustained Diffuse degloving injury right elbow with I/C fracture right elbow (Grade II Compound) and Fracture ribs 8th and 9th right and the injury.

11. Based on this injury, P.W.2 has fixed the disability as 40%. Even though this disability is non functional disability, this Court is of the view that reduction of percentage of injury by the Tribunal is not proper. I am inclined to accept the percentage of disability assessed by the P.W.2 since nature of injuries and the consequences have been stated by P.W.2. This Court follows the norms of fixing Rs. 4,000/- per percentage of injury for the accident taken place in the year 2014. Hence she is entitled for $40 \times 4000 =$ Rs. 1,60,000/- only compensation for disability sustained by her.

12. The Compensation awarded by the Tribunal are not proper under the following heads: Extra-nourishment, attender charges, Pain and suffering and the same are modified as Rs. 20,000/-, Rs. 5,000/- and Rs.30,000/- increased respectively.



13. The Tribunal has awarded compensation under the loss of future prospectus and there is no evidence placed on record to show that any future medical treatment is necessary or not. However, the Tribunal has not awarded compensation under the loss of amenities. Considering the fact that the petitioner being lady, sustained fracture and the injuries as stated supra. This court is of the view that the claimant is entitled for loss of amenities to the extent of Rs.20,000/-. Accordingly the compensation awarded under the loss of future prospectus modified into loss of amenities. As for all the compensation awarded under other heads are hereby confirmed.

14. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Amount Awarded by Tribunal (Rs.)</i>	<i>Amount Awarded by the Court (Rs.)</i>	<i>Award confirmed or enhanced or reduced</i>
1.	Disability	60,000/-	1,60,000/-	Enhanced
2.	Pain and suffering	20,000/-	30,000/-	Enhanced
3.	Extra Nourishment	10,000/-	20,000/-	Enhanced
4.	Transport Charges	3,000/-	3,000/-	Confirmed
5.	Hospital and Medical	1,35,165/-	1,35,165/-	Confirmed



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S.No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
	Experts			
6.	Attender Charges	1,250/-	5,000/-	Enhanced
7.	Loss of Earnings	12,000/-	12,000/-	Confirmed
8.	Loss of Future prospectus /Modified as loss of amenities	20,000/-	20,000/-	Confirmed
	Total Compensation	2,61,450/-	3,85,165/-	Enhanced

15. The Transport Corporation is directed to deposit the enhanced amount of Rs.3,85,165/- along with 7.5% interest within a period of six weeks from the date of receipt of copy of this order. On such deposit, the claimant herein are entitle to withdraw the same. In the result, the appeal filed by Transport Corporation in C.M.A. No. 3577 of 2021 stands dismissed and the appeal filed by claimant in C.M.A. No. 3504 of 2021 is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

22.02.2024

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



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To

1. Motor Accident Claims Tribunal
Special Sub Court No.1,
Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.



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K.RAJASEKAR.J

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C.M.A.No.3504 and 3577 of 2021
and
C.M.P.No. 20852 of 2021

22.02.2024