



C.M.A.(MD).No.1256 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.12.2023

PRONOUNCED ON : 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1256 of 2017

Nagarathinam

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Byepass Road,
Madurai.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award passed in M.C.O.P.No. 902 of 2012 dated 06.10.2015 on the file of the 4th Additional Subordinate Judge (Motor Accidents Claims Tribunal), Madurai.

For Appellant : Ms.P.Yasmin Begum
For Respondent : Mr.M.Prakash

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/petitioner challenging the judgment and decree passed by the



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learned Motor Accident Claims Tribunal (4th Additional Subordinate Judge), at Madurai in M.C.O.P.No.902 of 2012 dated 06.10.2015. The appellant herein is the claimant in the claim petition and the injured claimant has preferred this appeal seeking enhancement of compensation.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.902 of 2012.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

On 22.07.2011 at about 17.15 hours at Cumbam to Chinnamanur Main road near Anumanthapatty bus stop I.e., 3 kms south of Uthamapalayam Police Station, the petitioner was travelling in a bus bearing registration No.TN-72-N-1213 belonging to the respondent as passenger from Cumbam to Chinnamanur. Due to the over crowd in the bus, the petitioner was standing near the front entrance of the bus, while the same was running along Cumbam to Chinnamanur road from north to south direction. When the bus was proceeding from north to south, the driver drove the bus in a rash and negligent manner and while the bus



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was crossing Cumbam, he applied sudden break causing a sudden jolt. As a result of which, the petitioner was thrown away from the bus and sustained severe head injury and she was immediately rushed to Uthamapalayam Government Hospital for first aid and from there, she was shifted to Devadoss Multispeciality hospital on 22.07.2011 itself. Thereafter, she was discharged on 02.08.2011. After which, she continued her treatment as out patient. The accident occurred only due to rash and negligent driving of the driver of the respondent. As a result of which, the petitioner has filed a claim petition seeking compensation of Rs.5,00,000/- from the respondent Corporation for the rash and negligent driving of the driver of the respondent Corporation to compensate the injury sustained by the her/injured.

4.The respondent Corporation had filed a counter before the learned Tribunal refuting the allegations made by the petitioner in the claim petition and claimed that the accident happened only due to the petitioner who failed to hold the hand bar near the front entrance.

5.The learned Tribunal framed three issues and three witnesses



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were examined as P.W.1 to P.W.3 thereby marking Ex.P1 to Ex.P3 on the side of the petitioner and one witness was examined on the side of the respondent Corporation and no document was marked. The learned Tribunal after recording the evidence and hearing the arguments advanced on both the sides and scrutinizing the evidence, both the oral and documentary and upon appreciation of evidence, held that the accident occurred only due to the negligence of the driver of the respondent Corporation. The respondent Corporation is held vicariously liable for the conduct of the driver of the Corporation. The partial permanent disability of 39% as fixed by P.W.3 Doctor Adiyappan is excessive and the learned Tribunal has reduced the same to 29% and had calculated compensation for partial permanent disability by fixing Rs. 2,000/- per percentage for 29%. Thereby, a sum of Rs.58,000/- granted towards partial permanent disability. The learned Tribunal has awarded a sum of Rs.9,000/- (Rs.4,500x2) for loss of income for two months. The learned Tribunal has awarded the compensation under the following heads:-

Head	Compensation awarded
(I)Partial Permanent Disability:	Rs.58,000/-



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(ii)loss of income:	Rs.9,000/-
(iii)Pain and suffering	Rs.30,000/-
(iii)Extra nourishment:	Rs.5,000/-
(iv)Transportation:	Rs.5,000/-
(v)Medical Expenses:	Rs.92,560/-
(vi)Loss to cloths:	Rs.1,000/-
Total compensation awarded:	Rs.2,00,560/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the award, the petitioner has filed this Civil Miscellaneous Appeal seeking enhancement of compensation claiming that the Tribunal ought to have awarded compensation at a higher rate of more than Rs.2,000/- for every percentage of disability by considering that the petitioner has sustained grievous head injury wherein dislocation, blood clot in brain and right ear, which could be substantiated from the C.T. Scan report which was marked as Ex.P17 to Ex.P21. The petitioner further claims that the Tribunal ought to have considered that the petitioner is facing severe head ache all the time, suffering from tinnitus, amnesia loss of memory, dimness of eye sight and loss of sensation in taste and smell, etc. The learned counsel for the petitioner categorically submitted that the Tribunal ought to have applied multiplier method for



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arriving at the compensation for the disability.

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7.In the instant case, the petitioner had claimed that she earned an amount of Rs.10,000/- per month by her fruits/snacks vending business per month. However, considering the fact that she did not file any document to prove the same, the learned Tribunal has fixed a sum of Rs. 4,500/- as monthly income and on the basis of which, the Tribunal has awarded a compensation of Rs.9,000/- for two months under the head of loss of income. However, while considering the head of partial permanent disability, the learned Tribunal put into account the evidence deposed by P.W.3 namely Doctor Adiyappan, who issued the permanent disability certificate assessing the disability as 39%. Taking into account the cross examination of P.W.3, wherein the said Doctor Adiyappan had admitted that he was not the Medical Officer, who treated the petitioner but he had issued the said disability certificate on the basis of the scan report taken at the time of treatment undergone by the petitioner during 2015 and he further deposed that all those blood clots in the said scan report has been duly treated and presently the petitioner is no more suffering for blood clots in any part of her head. That apart he had also



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admitted that the scan report will not reveal anything about the memory aspects of the petitioner. Considering all those facts, the learned Tribunal felt that the partial permanent disability of 39% as fixed by P.W.3 is excessive and has reduced the same to 29% and had calculated compensation for partial permanent disability by fixing Rs.2,000/- per percentage for 29%. Considering the fact that the accident took place in the year 2015 and even after span of 7 years, the petitioner is still suffering the side effects of injury sustained and the same has been duly deposed by the Doctor who is treating the petitioner post accident. Hence, this Court is of the considered view that the learned Tribunal ought not to have reduced the percentage of partial permanent disability from 39% to 29% without any rational justification.

8.In view of the same, this Court is inclined to fix the partial permanent disability to 39% as certified by P.W.3 vide Ex.P22, who is an expert witness. That apart this Court is also inclined to enhance the compensation from Rs.2,000/- to Rs.2,500/- per percentage I.e. Rs. $2500 \times 39\% = \text{Rs.}97,500/-$. The learned Tribunal has fixed the monthly income of the petitioner as Rs.4,500/- I.e. Rs.150/- per day. This Court is



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inclined to enhance the monthly income from Rs.4,500/- to Rs.6,000/- ie.

Rs.200/- per day. Hence, the compensation under the Head of loss of income for two months is enhanced from Rs.9,000/- to Rs.12,000/-.

Hence, the total compensation will be enhanced from Rs.2,00,560/- to 2,43,060/-.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Enhanced/ Confirmed
(I)Partial Permanent Disability:	Rs.58,000/-	Rs.97,500/-	Enhanced
(ii)loss of income:	Rs.9,000/-	Rs.12,000/-	Enhanced
(iii)Pain and suffering	Rs.30,000/-	Rs.30,000/-	Confirmed
(iii)Extra nourishment:	Rs.5,000/-	Rs.5,000/-	Confirmed
(iv)Transportation:	Rs.5,000/-	Rs.5,000/-	Confirmed
(v)Medical Expenses:	Rs.92,560/-	Rs.92,560/-	Confirmed
(vi)Loss to cloths:	Rs.1,000/-	Rs.1,000/-	Confirmed
Total compensation awarded:	Rs.2,00,560/-	Rs.2,43,060/-	Enhanced



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9.The petitioner/claimant is entitled to a sum of Rs.2,43,060/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The respondent/Transport Corporation is directed to deposit Rs.2,43,060/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

10.Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs.

03.01.2024

NCC : Yes / No
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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(4th Additional Sub Judge), Madurai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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