



CMA No.3377 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3377 of 2021

H.Rubini

... Petitioner

Vs.

Metropolitan Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai-2.

... Respondent

Prayer: The Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.11.2011 made in MCOP No.4592 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Cour-V, Chennai.

For Petitioner : Mr.T.G.Balachandran

For Respondent : Mr.V.Vinothraj



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ORDER

The appellant herein, who is the injured/ claimant in MCOP No.4592 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Cour-V, Chennai, has filed the present appeal, seeking enhancement of compensation awarded by the Tribunal.

2. It is not in dispute that on 12.11.2009, when the claimant was proceeding in a cycle at Royapettah High Road near Apparsamy Koil, Mylapore, the bus belonging to the respondent Corporation hit the bicycle of the claimant, as a result of which, she suffered injury. Having regard to the nature of injury suffered by the claimant/appellant and the other evidences available on record, the Tribunal awarded a sum of Rs.27,500/- as compensation. Not satisfied with the quantum of compensation granted by the Tribunal, the claimant / appellant has come before this court by way of this civil miscellaneous appeal.

3. The learned counsel for the appellant submits that the PW2, Doctor has assessed the disability suffered by the appellant at 35% and to that effect, he issued disability certificate, which was marked as Ex.P9. But the Tribunal, by over looking the said document, has granted only a sum of Rs.10,000/- towards disability and the same

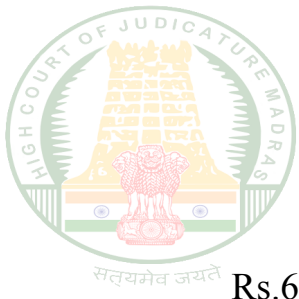


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requires enhancement. In this regard, the learned counsel for the appellant relies on a judgment of the *Apex Court in Master Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd., and another reported in 2013(2) TN MAC 338 (SC)*. The learned counsel further submits that the Tribunal has awarded a total sum of Rs.7,500/- towards medical and other incidental expenses, including transportation, nutrition, attender charges, and hence, the same needs enhancement under separate heads.

4. The learned counsel for the respondent Corporation would submit that the PW2 was not a doctor, who treated the injured/ claimant and hence, his evidence and the certificate issued by him cannot be taken into consideration. He further submits that, as per the discharge summary produced by the claimant, which was marked as Ex.P4, she suffered a fracture in her right great toe and right thigh and the same was treated and in such circumstances, 35% disability assessed by the PW2 is very much on higher side. He also submitted that though the claimant was treated in a private hospital for 25 days, she has not produced any material to claim a sum of Rs.20,000/- towards medicine and treatment and she produced the medical bills only for a sum of



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Rs.6,700/-. Hence, Considering the same, the Tribunal has fixed medical expenses and other incidental expenses at Rs.7,500/- and the same requires no interference.

5. At the time of accident, the injured claimant was a minor girl, aged 13 years, studying VII standard. Therefore, the judgment of the *Hon'ble Supreme Court in Mallikarjun Vs. Divisional Manager, National Insurance Company Limited and others reported in (2014) 14 SCC 396 : (2015) 1 SCC (Civ) 335: (2015) 1SCC (cri) 372: 2013 SCC Online SC 764.*, cited supra can be taken into consideration, for the purpose of fixing compensation, in case of permanent disability.

6. In order to prove the permanent disability suffered by the appellant/claimant, doctor was examined as PW2 and he deposed that he was not the doctor, who treated the claimant. But, he assessed the disability only after two years from the date of discharge summary filed by the claimant/appellant, marked as Ex.P4. It is seen from the evidence that the claimant suffered fracture in her right great toe and also suffered injury in her right thigh and to cure the same, skin grafting surgery was performed. It is also seen from Ex.P4, discharge summary that the claimant was in hospital from 14.12.2009 to 08.01.2010, nearly



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for 25 days. The PW2, in his evidence admitted that he has not treated the claimant. He also stated that the claimant has got difficulty while she is walking (கால் ஊன்றி நடப்பதில் சிரமம்), due to the fracture suffered in her right thigh.

7. Having regard to the nature of injury and the difficulty suffered by the appellant/ claimant while walking, this court feels that the assessment of disability at 35% by the PW2 is very much on higher side. However, taking into consideration the discharge summary Ex.P4 and the evidence of Doctor, PW2, this court feels that it would be appropriate to fix disability suffered by the claimant at 10%. Therefore, as per the law laid down by the Hon'ble Supreme Court in **Master Mallikarjun case**, cited supra, for the disability of 10%, a sum of Rs.1,00,000/- is fixed as compensation.

8. Having regard to the date of accident and the period of hospitalization, the claimant /appellant is entitled to Rs.10,000/- each towards “attender charges” and “Transportation”.

9. As far as the compensation awarded by the Tribunal towards



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“ Pain and sufferings” is concerned, this court feels that it is just and reasonable and hence, the same is confirmed. Further, the claimant has produced medical bills only for a sum of Rs.6,700/- as per Ex.P8. Therefore, the compensation of Rs.7,500/- awarded by the Tribunal towards medical expenses and other incidental expenses is also confirmed.

10. Accordingly, the revised compensation awarded by this Court under various heads are as follows.

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	10,000	10,000	confirmed
2.	Medical and other incidental expenses	7,500	7,500	confirmed
3.	Permanent Disability	10,000	1,00,000	enhanced
4.	Transportation	-	10,000	granted
5.	Attender charges	-	10,000	granted
	Total	27,500	1,37,500	enhanced by Rs.1,10,000/-

11. With the above modifications, this Civil Miscellaneous



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Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,500/- is hereby **enhanced** to Rs.1,37,500/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

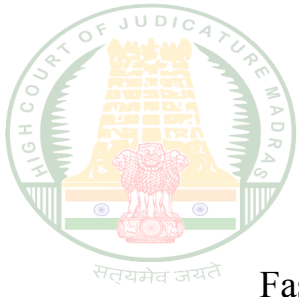
12. The respondent is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. No costs.

06.02.2025

Index:Yes/No
Internet:Yes/No
mst

To

1.The Additional District and Sessions Judge,



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Fast Track Cour-V,
Chennai.

2. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai-2.



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S.SOUNTHAR, J.

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