

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.3129 of 2004

The Managing Director

K.S.R.T.C. III Depot,

R.H.Road, Bangalore-560 027. ...Appellant / 2nd Respondent

Vs.

1.Venkatesan

2.Thippanna

...Respondents / Petitioner &
I Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.04.2003 made in M.C.O.P.No.679 of 2002 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.II), Ranipet, Vellore District.

For Appellant : Mr.V.Ramesh

For Respondent : Mr.P.Mani for R-1

JUDGMENT

This appeal has been preferred by the Transport Corporation against the award of Rs.1,50,000/-, for the injuries sustained by the claimant, in the accident, which occurred on 09.01.1999, while he was standing on the road and having hit by the bus, belonging to the appellant transport corporation.

2. Heard Mr.V.Ramesh, learned counsel appearing for the appellant and Mr.P.Mani, learned counsel appearing for the first respondent.

3. A perusal of the records would show that the first respondent/claimant sustained injuries, namely, fracture of both bones left leg junction of distal one third and proximal two third, fracture of both bones right leg junction of proximal one third and distal two third. However, P.W.2 Doctor without even verifying the discharge summary, determined disability at 60%.

Therefore, the Tribunal rightly disbelieved the disability certificate and awarded Rs.30,000/-. To ascertain the correct fact, this Court directed the appellant to produce the discharge summary and the discharge summary dated 26.01.1999 has been produced. It shows that type one open fracture both bones left leg, closed fracture tibia of right leg. From the above said evidence, the claimant sustained two fractures. That apart, this Court directed the respondent/claimant subject to himself for examination by Orthopedic surgeon attached to the High Court Clinic, who opined that 50% disability has been caused to the respondent/claimant. Surgery was also done on 13.01.1999. In those circumstances, this Court is inclined to fix the disability at 50% and awards Rs.2,000/- per percentage. Thus, a sum of Rs.1,00,000/- is awarded for 50% disability, instead of Rs.30,000/- awarded by the Tribunal. A sum of Rs.20,000/- was awarded towards loss of earning power, Rs.3,000/- was awarded towards transportation, Rs.2,000/- was awarded towards Extra nourishment, Rs.65,000/- was awarded towards hospital bills as per Ex.P5 series and a sum of Rs.30,000/- was awarded towards pain and sufferings and are all reasonable and the same are confirmed. The award of Rs.1,50,000/- is enhanced to Rs.2,20,000/- along with interest at the rate of 9% p.a., and costs.

4. Though the appeal has been filed by the Transport Corporation, re-appreciating the evidence on record under Order 41 Rule 33 C.P.C., this Court suo-moto enhanced the compensation from Rs.1,50,000/- to Rs.2,20,000/-, even in the absence of any appeal/cross appeal filed by the first respondent/claimant.

5. The appellant Transport Corporation is directed to deposit the entire award amount, minus the amount already deposited, if any, along with interest at the rate of 9% p.a., with costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount within one week.

6. In view of the above, this civil miscellaneous appeal is disposed of. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rrg

To

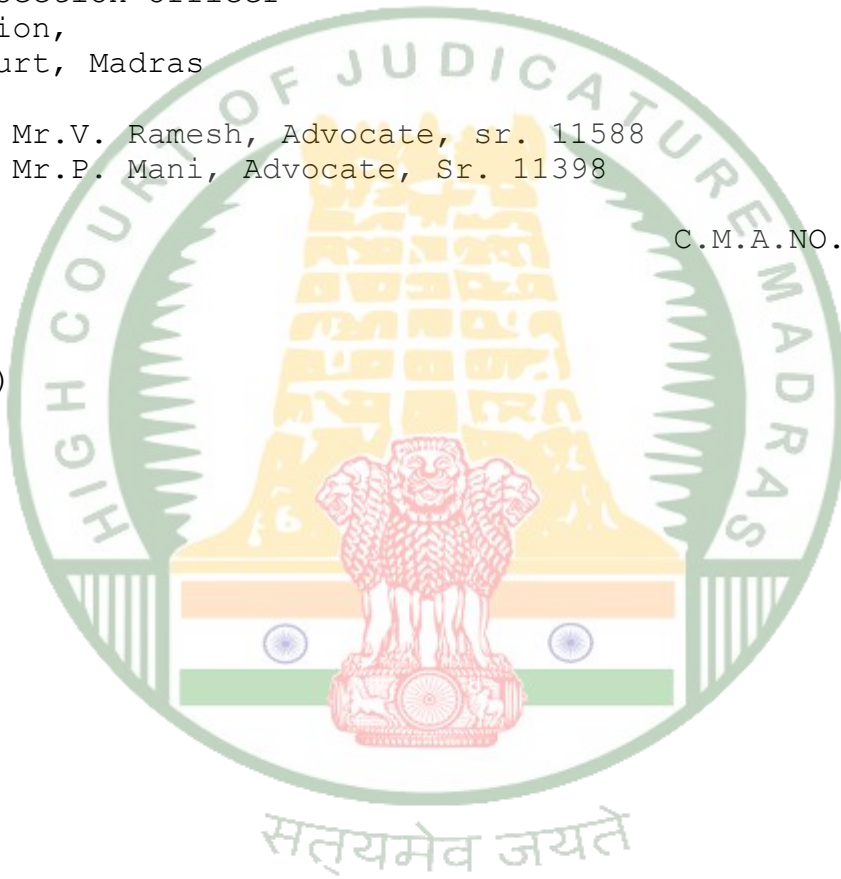
1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge)
(Fast Track Court II)
Ranipet, Vellore District

2. The Section officer
VR Section,
High Court, Madras

1 cc to Mr.V. Ramesh, Advocate, sr. 11588
1 cc to Mr.P. Mani, Advocate, Sr. 11398

C.M.A.NO.3129 of 2004

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