

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1933 of 2006 and
M.P.No.1 of 2006

The Managing Director
Tamil Nadu State Transport Corporation Limited
Coimbatore Division - II,
Chennimalai Road, Erode-1. Appellant/2nd Respondent

Vs.

1.R.Palanisamy @ Palaniappa Gounder
2.A.Ramasamy Respondents/Petitioner/1st Respondent
(Hence Givenup)

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.11.2005 made in MCOP No.126 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

For Appellant : Mr.N.Anand
For R-1 : Mr.K.S.Jayaganesan
For R-2 : given up

J U D G M E N T

Today, when this matter is taken up for consideration, the learned counsel for the appellant/Transport Corporation and the learned counsel for the first respondent/claimant jointly submitted that the first respondent has already filed an appeal in CMA.No.3116/2018 as against the very same award passed by the claims Tribunal arising out of the same accident and this Court, vide judgment dated 18.01.2019, partly allowed the said appeal enhancing the compensation awarded by the claims Tribunal from Rs.1,18,000/- to Rs.1,58,000/-. In support of the said submission, they produced a copy of the said judgment.

2.This Court perused the judgment dated 18.01.2019 passed by this Court in CMA No.3116 of 2018, the relevant portion of which, for easy reference, is extracted hereunder :-

"This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 03.11.2005 made in M.C.O.P .No.126 of 2005 on the file of the Chief Judicial Magistrate, Erode.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.Mr.K.J. Sivakumar, learned counsel takes notice for the second respondent Transport Corporation.

4.The appellant is the claimant and the Transport Corporation is the second respondent in M.C.O.P.No.126 of 2005 on the file of the Chief Judicial Magistrate, Erode. He has filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.09.2003.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the second respondent and considering the nature of the injuries and the evidences of PW.2, PW.3 and PW.5, I awarded a sum of Rs.1,18,000/- as compensation and directed the second respondent to pay the abovesaid compensation to the appellant.

6.Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal.

7.The learned counsel appearing for the appellant contended that the amount awarded by the Tribunal for pain and suffering is meager. The Tribunal has not awarded any amount for extra nourishment, attendant charges and disability 15% as assessed by the Neuro surgeon, which was marked as Ex.P17 and prayed for enhancement of compensation.

8.Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the second respondent/Transport Corporation contended that the injuries sustained by the appellant are completely cured and the percentage of disability certified by the Doctor is excessive. The doctors examined the appellant are not the doctors, who treated him. The Tribunal, considering the nature of the injuries and the treatment taken by the appellant, has awarded compensation, which is not

meager. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials on record.

10. From the materials available on record, it is seen that the appellant has examined two doctors as PW.3 and PW.5, who are Orthopedic and Neuro Surgeons respectively. PW3 certified that the percentage of disability sustained by the appellant is 18% and PW5 certified that the percentage of disability sustained by the appellant is 15%. Though the Tribunal has awarded Rs.18,000/- for disability certified by P.W.3 at 18%, the Tribunal has not awarded any amount for disability as certified by PW.5. Hence, the appellant is entitled to a sum of Rs.15,000/- for 15% of disability as certified by PW.5 as per Ex.P.17. The appellant was in hospital for 25 days. The Tribunal has not awarded any amount for attendant charges and extra nourishment. Hence, a sum of Rs.10,000/- each is awarded for attendant charges and extra nourishment. The amount awarded by the Tribunal for pain and suffering is meager and the same is enhanced to Rs.15,000/- from Rs.10,000/- The amounts awarded by the Tribunal under all other heads are fair and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
Loss of income	10,000/-	10,000/-	confirmed
Medical Expenses	75,000/-	75,000/-	confirmed
Permanent disability	18,000/-	33,000/-	enhanced

Pain and suffering	10,000/-	15,000/-	Enhanced
Attendant Charges	-	10,000/-	Granted
Extra Nourishment	-	10,000/-	granted
Loss of earning capacity	5,000/-	5,000/-	confirmed
Total	1,18,000/-	1,58,000/-	Enhanced by - Rs.40,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,18,000/- is hereby enhanced to Rs.1,58,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

12. The second respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court, less the amount already deposited, if any, with interest and costs within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs less the amount if any, already withdrawn. No costs."

3. In the light of the aforesaid judgment, this Civil Miscellaneous Appeal filed by the Transport Corporation stands dismissed. No costs. Consequently, connected MP is closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Erode.

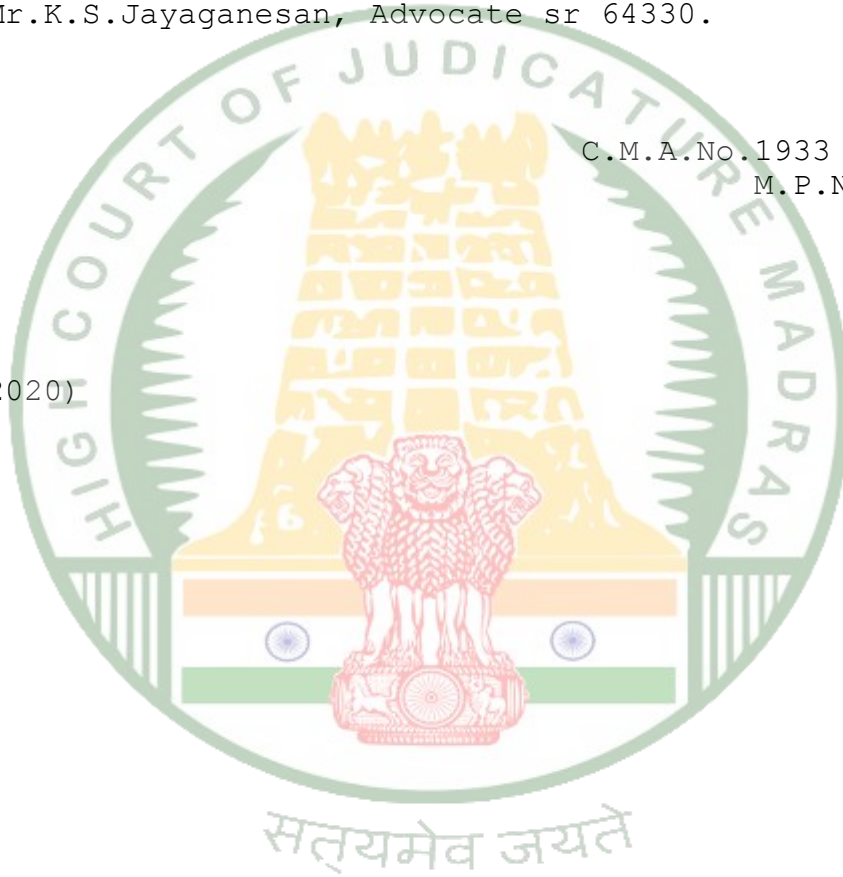
2.The Section Officer,
V.R. Section, High Court, Madras.

+1 CC to Mr.N.Anand, Advocate sr 65112

+1 CC to Mr.K.S.Jayaganesan, Advocate sr 64330.

C.M.A.No.1933 of 2006 and
M.P.No.1 of 2006

KK(CO)
SP(24/07/2020)



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