

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2648 of 2015
and C.M.P.No.2679 of 2017

G.Sundaram

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division III,
Kanchipuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2015 made in M.C.O.P.No.2838 of 1999 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.J.Ramkumar
For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 28.04.2015 made in M.C.O.P.No.2838 of 1999 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2838 of 1999 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.11.1998.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.58,000/- as compensation to the appellant/claimant.

4. Not being satisfied with the compensation granted by the Tribunal dated 28.04.2015 made in M.C.O.P.No.2838 of 1999, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of P.W.2/Doctor, who certified the percentage of disability at 45% and the Tribunal without any basis reduced the same to 40%. The Tribunal ought to have fixed a sum of Rs.3,000/- per percentage instead of Rs.1,000/- per percentage for calculating compensation for disability. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal considered the nature of injuries and evidence of P.W.2/Doctor and fixed proper percentage of disability and amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the respondent-Transport Corporation and perused all the materials available on record.

8. From the materials on record, it is seen that the appellant as P.W.1 has deposed about the nature of injuries and examined P.W.2/Doctor, who certified that the appellant suffered 45% of disability. The Tribunal has reduced the same to 40% and the reason given by the Tribunal is erroneous. The appellant is entitled to compensation for 45% of disability. The accident took place on 29.11.1998. The Tribunal has rightly awarded a sum of Rs.1,000/- per percentage. Thus, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.45,000/- = $(Rs.1,000/- \times 45\%)$

9. The appellant has not suffered any fracture and taken treatment as in-patient for five days. In view of the same, a sum of Rs.1,000/- has been granted towards Attendant Charges. The Tribunal has awarded a sum of Rs.1,000/- towards extra nourishment and the same is hereby enhanced to Rs.2,000/-. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earnings	5,000/-	5,000/-	confirmed
2.	Transportation	1,000/-	1,000/-	confirmed
3.	Extra Nourishment	1,000/-	2,000/-	enhanced
4.	Medical expenses	1,000/-	1,000/-	confirmed
5.	Pain and Suffering	10,000/-	10,000/-	confirmed
6.	Permanent Disability	40,000/-	45,000/-	enhanced
7.	Attender charges	-	1,000/-	granted
	Total	Rs.58,000/-	Rs.65,000/-	enhanced by Rs.7,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.58,000/- is hereby enhanced to Rs.65,000/- with interest at the rate of 7.5% per annum from the date of this judgment. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. 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 by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

pds/krk

To

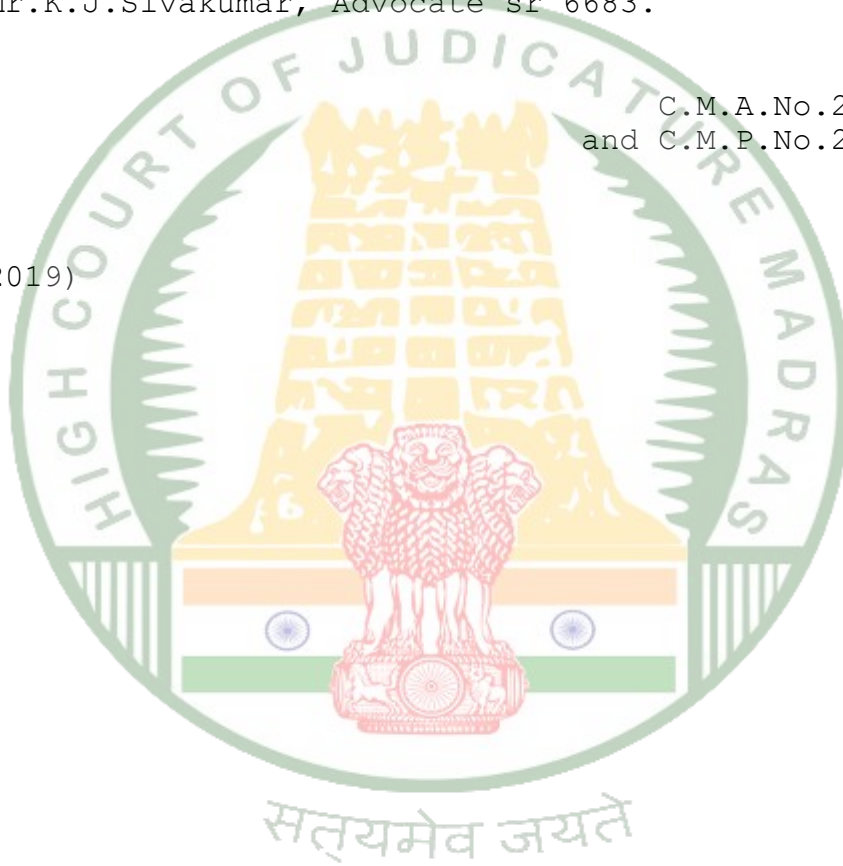
1.The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1 CC to Mr.K.J.Sivakumar, Advocate sr 6683.

C.M.A.No.2648 of 2015
and C.M.P.No.2679 of 2017

KJ(CO)
SP(27/08/2019)



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