

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3738 of 2011

K.Radhakrishnan

... Appellant / Petitioner

.. Vs ..

The Regional Manager,
Andhra Pradesh State Road Transport Corporation Ltd.,
Guntur. Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.03.2010 made in M.C.O.P.No.716 of 2005 on the file of the V Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.R.Arundattan
for M/s.C and K Law Firm

For Respondent : No Appearance

JUDGMENT

The claimant has come forward with this appeal for enhancement of the compensation awarded by the learned V Judge, Motor Accidents Claims Tribunal, [Small Causes Court], Chennai, in M.C.O.P.No.716 of 2005, dated 10.03.2010.

2. The short facts that are essential for the disposal of this appeal is that on 11.01.2005 at about 1.00 hours, when the claimant was travelling in a bus bearing Registration No.TN-57-C-9355 along the NH 45 from Tindivanam to Chennai, an APSRTC bus bearing Registration No.AP-11-Z-2234 came from opposite direction in a rash and negligent manner without following traffic rules and regulations and dashed against the bus, in which, the claimant was travelling. Due to which, the claimant and other passengers sustained grievous injuries. The accident occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing Registration No.AP-11-Z-2234. For the injuries sustained by the claimant, he has filed a claim petition claiming a sum of Rs.4,00,000/- as compensation.

3. Before the Tribunal, on behalf of the injured/claimant, witnesses P.Ws.1 to 3 were examined and documents Exs.P.1 to P.9 were marked. No witness was examined and no document was marked on the side of the respondent before the Tribunal.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.1,16,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit with proportionate costs to the claimant.

5. It appears from the award passed by the Tribunal that the Tribunal has committed calculation error while arriving at the compensation and the actual compensation that should have been awarded to the claimant is Rs.1,19,000/- instead of Rs.1,16,000/-. Having not satisfied with the award passed by the Tribunal, the injured/claimant has preferred this appeal for enhancement of compensation.

6. Heard the learned counsel appearing for the appellant/claimant. Even though notice was served on the respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

7. It appears from the award passed by the Tribunal that based upon the evidence of the injured/claimant and another injured person in the very same accident coupled with Ex.P.2-FIR, the Tribunal has held that the driver of the Andhra Pradesh State Road Transport Corporation bus bearing Registration No.AP-11-Z-2234 who drove the same in a rash and negligent manner was responsible for the accident. After going through the evidence of the injured person and also the documentary evidence, the said finding of the Tribunal is hereby confirmed.

8. The claimant in this case was working as male nurse in Government Hospital and has taken treatment for the fracture of both bone B/L forearm and treated as inpatient for 18 days and also underwent surgery as could be seen from the evidence of P.W.3-Doctor and Ex.P.3-Discharge Summary issued by the Government General Hospital, Chennai.

9. It appears that the Tribunal has taken into consideration the evidence of P.W.3-Doctor and Ex.P.3-Discharge Summary, which shows that the claimant has suffered fracture of both bone B/L forearm and was treated as inpatient from 11.01.2005 to 29.01.2005. He had undergone surgery from 13.01.2005 to 22.01.2005 and ORIF & ADCP B/L were done. Ex.P.4-OP Chit shows that he had taken further treatment as outpatient in the same hospital.

10. It appears that P.W.3-Dr.J.R.R.Thiagarajan assessed the disability at 75% and issued Ex.P.8/Disability Certificate, but the Tribunal has fixed the disability at 50% and arrived a sum of Rs.75,000/- towards partial permanent disability by granting Rs.1,500/- for 1% of disability. Considering the nature of injuries sustained by the injured/claimant and also the medical evidence of P.W.3/Doctor, this Court is of the view that the disability suffered by the claimant is refixed as 60% and the amount of compensation awarded by the Tribunal under the head of partial permanent disability is enhanced to Rs.90,000/- from Rs.75,000/-.

11. The Tribunal has awarded a sum of Rs.20,000/- towards pain and sufferings and the same is enhanced to Rs.25,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards attender charges and the same is enhanced to Rs.10,000/-. Under the head of damage to cloth, the Tribunal has awarded a sum of Rs.1,000/- which is just and reasonable and hence, the same is confirmed. A sum of Rs.3,000/- was awarded by the Tribunal under the head of transportation. This Court is of the view that it is just and reasonable to award a sum of Rs.10,000/- towards transportation. Under the head of extra nourishment, the Tribunal has awarded a sum of Rs.5,000/-, the same is enhanced to Rs.10,000/-. Under the head of loss of amenities, the Tribunal has not awarded any amount and hence, this Court is of the view that it is just and reasonable to award a sum of Rs.10,000/- under the said head. The Tribunal has awarded a sum of Rs.10,000/- towards loss of income and the same is confirmed.

12. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs. 75,000/-	Rs. 90,000/-
2.	Pain and Sufferings	Rs. 20,000/-	Rs. 25,000/-
3.	Attender charges	Rs. 5,000/-	Rs. 10,000/-
4.	Damage to cloth	Rs. 1,000/-	Rs. 1,000/-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
5.	Transportation charges	Rs. 3,000/-	Rs. 10,000/-
6.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
7.	Loss of income	Rs. 10,000/-	Rs. 10,000/-
7.	Loss of amenities	Nil	Rs. 10,000/-
	Total	Rs. 1,19,000/-	Rs. 1,66,000/-

13. In the result,

I. This Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.1,19,000/- to Rs.1,66,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The respondent-Transport Corporation is directed to deposit the enhanced amount within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount with proportionate interest, less the amount already withdrawn, if any.

V. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

VI. No order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jr1

To

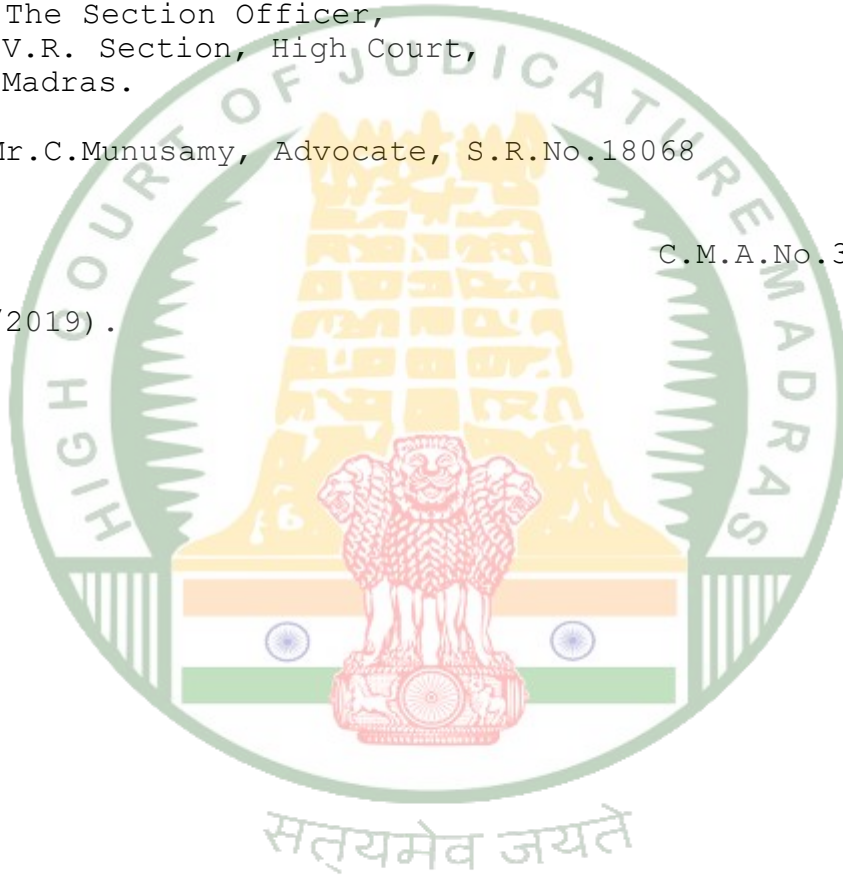
1. The V Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.
2. The Regional Manager,
Andhra Pradesh State Road Transport Corporation Ltd.,
Guntur.

Copy to: The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to Mr.C.Munusamy, Advocate, S.R.No.18068

C.M.A.No.3738 of 2011

MR(CO)
SSM(02/07/2019).



WEB COPY