

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2062 of 2013

K. Kaniraj

.. Appellant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation
Kumbakonam Limited
Railway Station New Road,
Kumbakonam 612 001.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.02.2012, made in M.C.O.P. No. 4161 of 2009, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. Ravindran
for M/s. A. Shanmugaraj

For Respondent : Mr. D. Venkatachalam

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 14.02.2012, made in M.C.O.P. No. 4161 of 2009, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 4161 of 2009, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.01.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the respondent-Transport Corporation Bus and directed the respondent to pay a sum of Rs.50,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 14.02.2012, made in M.C.O.P. No. 4161 of 2009, the appellant has come out with the present appeal.

5. Though the learned counsel appearing for the appellant raised various grounds with regard to enhancement of the compensation, when the matter is taken up for hearing, he has restricted his arguments only with regard to enhancement of compensation towards disability. The learned counsel appearing for the appellant contended that due to the accident, the appellant suffered dislocation in left elbow and multiple abrasion over the left elbow. The appellant proved the same by examining P.W.4 – Doctor, who has assessed that the appellant suffered 30% disability and issued Ex.P26 – Disability Certificate to that effect. The Tribunal reduced the percentage of disability to 25% on the ground that the assessment of P.W.4 – Doctor is on the higher side. The appellant is entitled to compensation for 30% disability and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal considering the fact that the assessment of P.W.4-Doctor is on higher side, rightly reduced the percentage of disability to 25% and awarded just compensation, which is not meagre. The appellant is not entitled for compensation towards 30% disability and prayed for dismissal of the appeal.

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

8.It is the contention of the appellant that in the accident, he suffered dislocation of left elbow, fibrosis left elbow with elbow joint, movements are restricted and took treatment as out-patient in Government Head Quarters Hospital, Villupuram. P.W.4- Doctor has assessed the percentage of disability suffered by the appellant as 30%. The respondent did not let in any evidence to disprove the evidence of P.W.4 – Doctor and disability certificate marked as Ex.P26. The Tribunal reduced the percentage of disability to 25% on the

ground that the disability assessed by the Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards disability for 30% disability as there is no contra evidence. The Tribunal has granted compensation towards disability at the rate of Rs.1,000/- per percentage for 25% disability. The accident is of the year 2009. Considering the rise in cost of living, the appellant is entitled to compensation towards disability at the rate of Rs.2,000/- per percentage for 30% disability. Hence, the amount granted by the Tribunal towards disability is enhanced to Rs.60,000/- (Rs.2,000/- x 30%). The amount 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 income	4,500/-	4,500/-	Confirmed
2.	Permanent disability	25,000/-	60,000/-	Enhanced
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Medical expenses	2,000/-	2,000/-	Confirmed
5.	Pain and suffering	10,000/-	10,000/-	Confirmed

6.	Damage to clothes	2,000/-	2,000/-	Confirmed
7.	Transport	2,000/-	2,000/-	Confirmed
	Total	50,500/-	85,500/-	Enhanced by Rs.35,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.50,500/- is enhanced to Rs.85,500/- along with interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.4161 of 2009. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.35,000/-. No costs.

Index : Yes / No
gsa

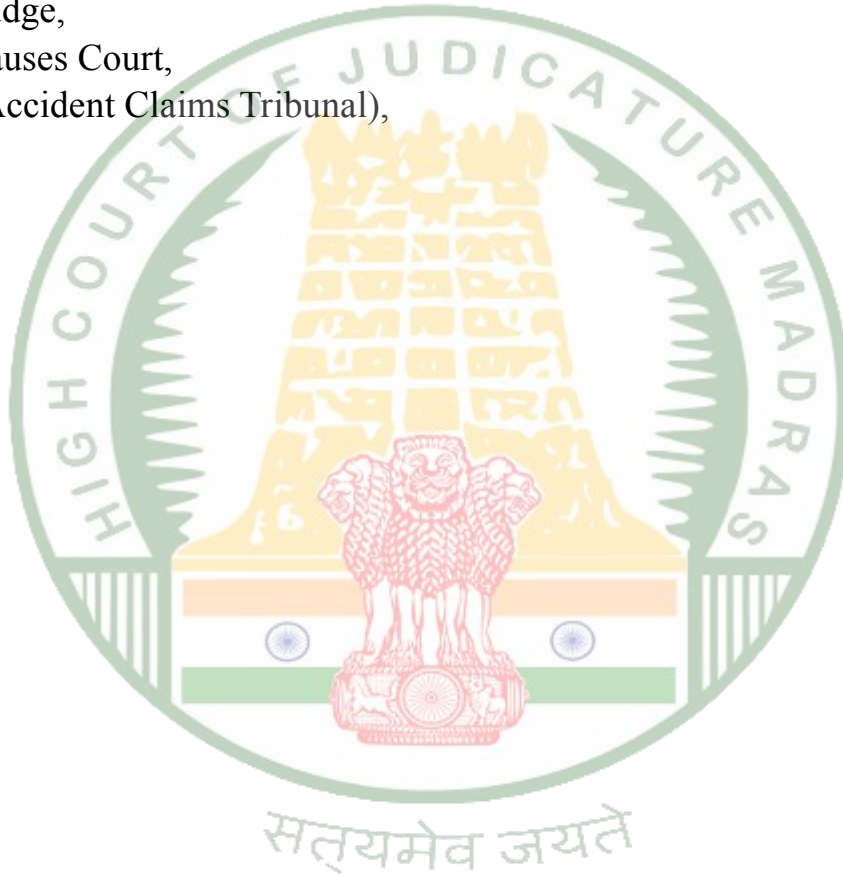
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To

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

2.The V Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

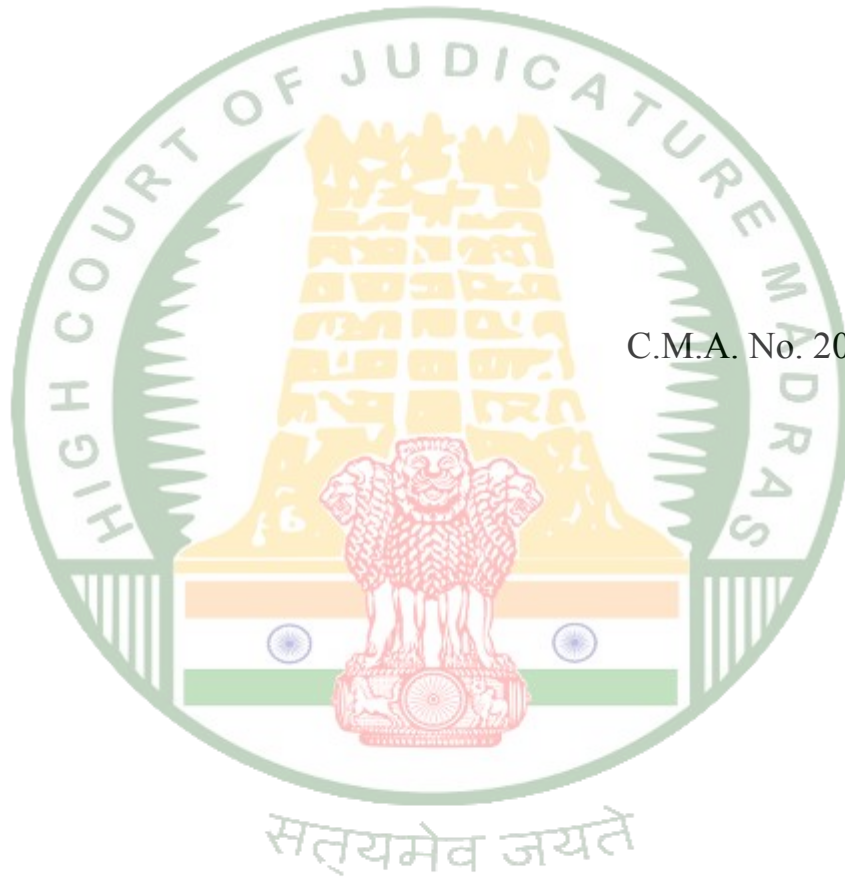


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V.M.VELUMANI, J.,

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