

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.468 of 2016
and
C.M.P.No.3602 of 2016

Royal Sundaram Alliance
Insurance Company Limited
Mangalam Buildings
Near Four Road, Salem 636 009 Appellant/2nd
Respondent

vs.

1. Karthick ... 1st Respondent/Petitioner
2. Raja Rathinam ... 2nd Respondent/
1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 22.07.2015 passed in M.C.O.P.No.1033 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), Salem.

For Appellant : Mr.M.B.Raghavan
For Respondent No.1: Mr.SP.Yuvaraj

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The Insurance Company is on appeal challenging the Judgment dated 22.07.2015 passed in M.C.O.P.No.1033 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), Salem.

2. It is a case of injury. On 31.03.2013 at about 16.30 hrs when the injured was travelling as a Pillion rider in the APPACHI Motor Cycle bearing Registration No.TN 30 AR 8041 riding by his friend viz., Karthick on the Salem to Yercaud Main Road at 18th U Turn towards Yercaud, at that time, the 1st respondent's HUNDAI VERNA CAR bearing Registration No.TN 22 BA 7926 came from the opposite direction driven by its driver in an uncontrollable speed, without minding the traffic rules and

regulations dashed against the Motor Cycle and caused the accident. In the said accident, the injured sustained commuted fracture and multiple grievous injuries all over the body and he was immediately taken to Government Hospital, Kovai and admitted as an inpatient for 70 days and thereafter taking treatment as out patient. A criminal case was registered against the driver of the CAR in Crime No.73 of 2013 by the Yercaud Police. The injured claimant filed a claim for compensation for a sum of Rs.15,00,000/-.

3. In support of the claim, the claimant examined himself as P.W.1 and Dr.Muthusamy was examined as P.W.2 and Exs.P-1 to Ex.P.11 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Medical discharge report
P3	Medical discharge report
P4	Medical discharge report
P5	Medical Bills Series
P6	Photos of wounds
P7	Photos of the claimant
P8	X-rays
P9	Copy of accident register
P10	Wound certificate
P11	Receipt
P12	X-rays

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 2nd respondent herein remained exparte.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the injured was having valid driving licence to drive the two wheeler came to conclusion that the driver of the car was rash and negligent in driving the vehicle and he was responsible for the accident and consequently liability was fixed on the insurance company, as the vehicle was insured with the appellant insurance company, to compensate the claimant. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at

7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of future income	Rs.5,10,300/-
2	Pain and suffering	Rs.1,00,000/-
3	Medical expenses	Rs.4,50,900/-
3	Loss of amenities and enjoyment	Rs.1,00,000/-
4	Transportation expenses	Rs. 10,000/-
5	Nutrition expenses	Rs. 10,000/-
6	Attender Charges	Rs. 25,000/-
8	Damage to clothes	Rs. 800/-
7	Loss of income for 10 months treatment period	Rs. 45,000/-
8	Permanent disability	Rs. 50,000/-
9.	Loss of expectation of life (Shortening of normal longevity)	Rs. 50,000/-
10	Loss of Prospects of marriage	Rs. 20,000/-
11	Future medical expenses	Rs. 25,000/-
	Total compensation	Rs.13,97,000/-

6. The learned counsel for the appellant/Insurance Company pleaded that the Tribunal has erred in awarding high compensation. He would further plead that the Tribunal has erred in considering excessive income in the absence of any reliable proof for income or occupation of the claimant. He further pleads that awarding both for future loss of earning and permanent disability is not permissible. That apart, the assessment of disability was exaggerated by Doctor, who had provided no treatment whatsoever and was a regular attendant in Court to certify disability.

7. On the other hand, the learned counsel for the claimant submitted that the injured was 24 years old at the time of accident. On account of the accident, he suffered Grade III B open distal femur fracture with intra articular extension with skin and muscle degloving, partial loss of medial condyle right femur, comminuted proximal fibula fracture with bone loss, comminuted right patella fracture with bone loss, sciatic nerve injury on the right side. Hence, the Tribunal is right in assessing the disability at 35% disability. Further, the Tribunal has taken the income of the injured at Rs.4,500/- per month and by adding future prospects at 50%, fixed the income at Rs.6,750/- and adopted the correct multiplier 18. As far as the

other heads under which compensation was awarded is concerned, the learned counsel pleaded that the Tribunal has rightly awarded compensation.

8. This Court heard the submissions made on the learned counsel on either side and perused the materials available on record.

9. Insofar as the compensation is concerned, based on the evidence of the claimant, the Tribunal has correctly fixed the income of the injured at Rs.4,500/- per month and by adding 50% towards future prospects, and fixing the disability at 35% and applying the multiplier of 18, granted the loss of future income. On perusing the treatment given to the injured, we are of the view that the compensation awarded by the Tribunal is just and proper except under the head "loss of expectation of life", which can be awarded only in case of fatal. Thus, the amount of Rs.50,000/- awarded under the heading loss of Expectation of life is deleted.

10. Accordingly, the compensation awarded by the Tribunal under different heads is modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Loss of future income	Rs.5,10,300/-	Rs.5,10,300/-
2	Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-
3	Medical expenses	Rs.4,50,900/-	Rs.4,50,900/-
3	Loss of amenities and enjoyment	Rs.1,00,000/-	Rs.1,00,000/-
4	Transportation expenses	Rs. 10,000/-	Rs. 10,000/-
5	Nutrition expenses	Rs. 10,000/-	Rs. 10,000/-
6	Attender Charges	Rs. 25,000/-	Rs. 25,000/-
8	Damage to clothes	Rs. 800/-	Rs. 800/-
7	Loss of income for 10 months treatment period	Rs. 45,000/-	Rs. 45,000/-
8	Permanent disability	Rs. 50,000/-	Rs. 50,000/-
9.	Loss of expectation of life (Shortening of normal longevity)	Rs. 50,000/-	-

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
10	Loss of Prospects of marriage	Rs. 20,000/-	Rs. 20,000/-
11	Future medical expenses	Rs. 25,000/-	Rs. 25,000/-
	Total compensation	Rs.13,97,000/-	Rs.13,47,000/-

11. There is no serious objection with respect the interest granted at 7.5% per annum.

12. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.13,47,000/- from Rs.13,97,000/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) The appellant is directed to deposit the entire award amount now granted by this Court if not already deposited to the credit of M.C.O.P.No.1033 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Court II), Salem, within a period of eight weeks from the date of receipt of a copy of the same and on such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount now modified by this Court along with proportionate interest by filing necessary application before the Tribunal. It is also made clear that if any excess amount is deposited, the appellant/Insurance company is entitled to withdraw the same.

There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Assistant Registrar(CS III)

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Sub Assistant Registrar

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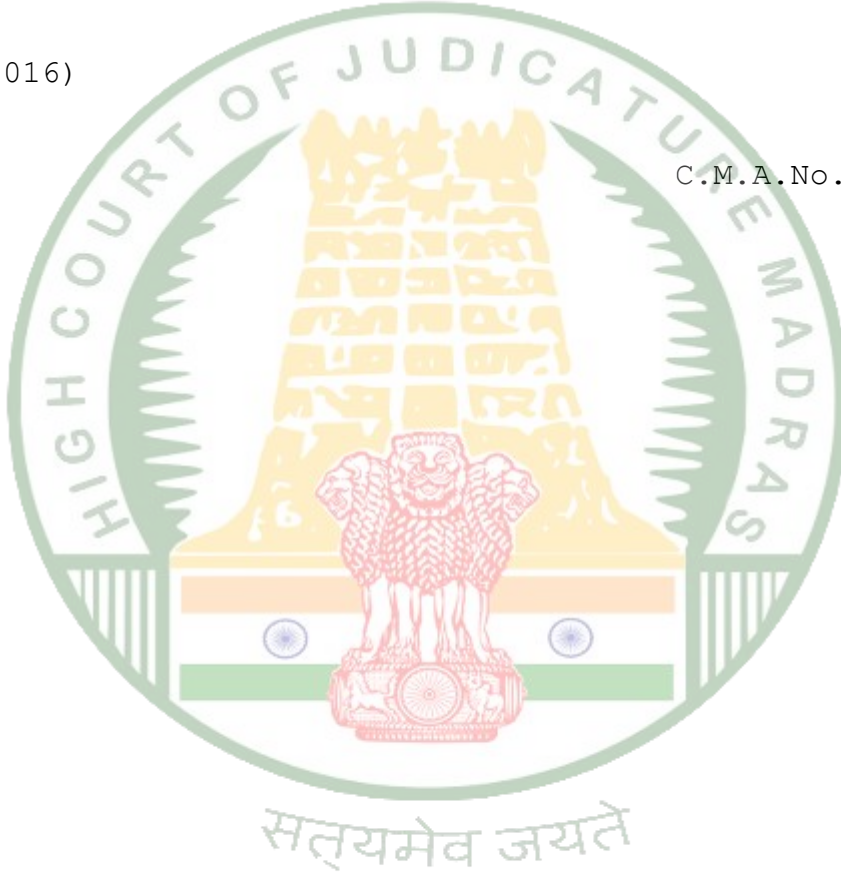
To

Motor Accidents Claims Tribunal
(Special Subordinate No.2), Salem.

+1cc to M/s. M.B. Gopalan, Advocate, S.R.No.14808
+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.14717

KSJ(CO)
EU(01/04/2016)

C.M.A.No.468 of 2016



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