IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A. No.671 of 2014
and C.M.A. No.1186 of 2014

C.M.A.No.671 of 2014:-
T.Sellathurai ...Appellant/Claimant

vs.

1.V.Logu Babu ...Respondent/Ist Defendant

2.Royal Sundaram Alliance Insurance Co.Ltd
No.46, Whites Road
Royapettah, Chennai-600 014 ..Respondents/2nd Respondent

C.M.A.No.1186 of 2014:-

Royal Sundaram Alliance Insurance Co.Ltd.,
No.46, Whites Road, Royapettach,
Chennai-14 ..Appellant/2nd Respondent

Vs

1.T.Sellathurai ..Respondent/Claimant
2.V.Logu Babu ..Respondents/1st defendant

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.3299 of 2011 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), at Chennai dated 24.10.2013.

For Appellant/Insurance Company : Mr.M.Krishnamoorthy

For Respondent No.1/claimant : Ms.P.T.Salim Fathima

For Respondent No.2/V.Logu Babu : No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The Royal Sundaram Alliance Insurance Company Ltd., has filed C.M.A.No.1186 of 2014 challenging the quantum of compensation while the claimant/T.Sellathurai has filed C.M.A.No.671 of 2014 seeking enhancement of the compensation made in M.C.O.P.No.3299 of 2011, dated 24.10.2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. It is a case of injury. On 31.07.2011 at about 00.15 hours, while the claimant/T.Sellathurai was riding the tricycle from east to west in Duraiswamy subway and proceeding near the Railway Track, a Maruthi Mini van bearing Reg.No.TN-09-BF-8597 driven by its driver in a rash and negligent manner, dashed against the tricycle, due to which the claimant was thrown down and sustained grievous injuries. The claimant filed a claim petition seeking compensation of Rs.24,00,000/-.

3. In support of the claim, the claimant examined himself as P.W.1 and Doctor Amarnath Sowlee who treated him was examined as P.W.2 and one Chinthamani was examined as P.W.3 and Exhibits P.1 to P.16 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked before the Tribunal.

4. The Tribunal, after taking note of the oral evidence of P.W.1 and Exhibit P.1-Copy of F.I.R., held that due to the rash and negligent driving by the driver of the Maruthi Mini Van, the accident occurred and consequently, fixed the liability on the appellant/Insurance Company.

5. The Tribunal, while considering the claim of the injured claimant, fixed the age of the claimant at 19 years on the basis of Ex.P.10-Copy of School Transfer Certificate and also considering the nature of occupation done by the claimant i.e., Assistant to Briyani Master and doing packaging service, fixed the salary at Rs.4,500/- per month. Based on Ex.P.2/Discharge Summary, which revealed that the claimant suffered grade III compound fracture of tibia and that the claimant was treated as inpatient at Karaikudi Institute of Ortho & Trauma from 29.11.2011 to 03.12.2011 and thereafter from 11.06.2012 to 14.06.2012, considering the age of the claimant, the tribunal adopted the multiplier of 16 and further taken the disability at 30% for the whole body, arrived at Rs.2,59,200/- under the head “Permanent disability” [Rs.4,500 x 12 x 16 x 30% =Rs.2,59,200/-]. Since the injured claimant had undergone treatment for a period of 8 months, the Tribunal awarded Rs.36,000/- under the head “loss of income during the period of

treatment". Further, 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 income	Rs. 36,000/-
2	Transport to Hospital	Rs. 8,000/-
3	Extra nourishment	Rs. 8,000/-
4	Damage to clothing	Rs. 1,000/-
5	Medical expenses	Rs. 75,000/-
6	Attender charges	Rs. 10,000/-
7	Loss of amenities of life	Rs. 10,000/-
8	Pain and suffering	Rs. 60,000/-
9	Permanent disability	Rs. 2,59,200/-
	Total	Rs. 4,67,200/-

6. Being not satisfied with the compensation awarded by the Tribunal, the claimant is before this court seeking enhancement of the award. On the other hand, the Insurance Company has raised contentions as regards the liability issue as well as the quantum of compensation.

7. Insofar as the aspect of negligence is concerned, the learned counsel appearing for the Insurance Company submitted that the name of the driver of the Maruthi mini van has been wrongly given and hence, the occurrence of accident itself is doubtful.

8. However, the learned counsel appearing for the claimant submitted that by clerical error, name of the driver of the maruthi mini van was incorrectly given initially. Thereafter, amendment petition was filed before the Tribunal and the correct name of the driver viz., V.Mohanraman has been given. She further submitted that it was only clerical mistake but not a deliberate one.

9. In view of the submission made by the learned counsel for the claimant and taking note of the amendment petition filed before the Tribunal, we hold that the liability fixed on the Insurance Company by the Tribunal warrants no interference and the same is confirmed.

10. Insofar as nature of injuries sustained by the claimant is concerned, the claimant is said to have undergone 6 surgeries. On the other hand, the said fact has been denied by the learned counsel for the Insurance company, who argued that only 3 surgeries has so far been done. On an overall consideration of the compensation awarded by the Tribunal under various heads, this Court is of the considered view that the

compensation awarded on certain heads requires enhancement. Accordingly, considering the disability suffered by the claimant and taking note of the fact that the injured claimant could not continue his earlier job and could not enjoy his life as before, we are inclined to add a further sum of Rs.1,00,000/- under the head "Loss of amenities and enjoyment of life" in addition to the amount already awarded by the Tribunal. Considering the long period of treatment undergone, we are of the view that the amount of Rs.8,000/- awarded under the head "Extra nourishment" is very meagre and hence, a sum of Rs.20,000/- is awarded in addition to the amount already awarded. In all, a sum of Rs.28,000/- is awarded under the head "Extra nourishment" , Further it is seen that future prospects has not been considered by the Tribunal while arriving at the compensation. This Court finds that a sum of Rs.50,000/- would be a just and reasonable compensation under the head "future prospects".

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 36,000/-	Rs. 36,000/-
2	Transport to Hospital	Rs. 8,000/-	Rs. 8,000/-
3	Extra nourishment	Rs. 8,000/-	Rs. 28,000/-
4	Damage to clothing	Rs. 1,000/-	Rs. 1,000/-
5	Medical expenses	Rs. 75,000/-	Rs. 75,000/-
6	Attender charges	Rs. 10,000/-	Rs. 10,000/-
7	Loss of amenities of life	Rs. 10,000/-	Rs. 1,10,000/-
8	Pain and suffering	Rs. 60,000/-	Rs. 60,000/-
9	Permanent disability	Rs. 2,59,200/-	Rs. 2,59,200/-
10	Loss of future prospects	----	Rs. 50,000/-
	Total	Rs. 4,67,200/-	Rs. 6,37,200/-

12. In the result, C.M.A.No.1186 of 2014 filed by the Insurance Company is dismissed. C.M.A.No.671 of 2014 filed by the claimant is partly allowed in the following terms.

(i) The award of the Tribunal is enhanced to Rs.6,37,200/- from Rs. 4,67,200/-. Thus, a sum of Rs.1,70,000/- is awarded over and above the compensation granted by the tribunal.

(ii) The award amount as ordered by this Court will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(iii) This Court by order dated 23.04.2014 directed the appellant/Insurance Company to deposit the entire amount awarded by the Tribunal along with accrued interest and costs. Further, by order dated 23.07.2014, this court, permitted the claimant to withdraw 50% of the award amount with proportionate accrued interest and costs from out of the deposit. In view of the compensation being enhanced by this court, the Insurance Company is directed to deposit the balance amount of compensation along with interest, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the amount in deposit, by filing proper application before the Tribunal.

(v) There will be no order as to costs in this appeal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvsri
To

The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

+1 cc to Mr.M.Swamikannu Advocate sr 27306
+1 cc to Mr.M.Krishnamoorthy Advocate sr.27136

aa28/06/2016