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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.Nos.19 and 1840 of 2015
M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co. Ltd.,
Chennai 600 020. ... Appellant in C.M.A.No.1840/15
.. 3rd Respondent in
C.M.A.No.19 of 2015

vs

1. Dhanabagyam .. Appellant in C.M.A.No.19/2015
1st Respondent in
C.M.A.No.1840 of 2015
2. P.R.Selvam
3. C.Vijayendran .. Respondents 1 and 2 in
C.M.A.No.19 of 2015
Respondents 2 and 3 in
C.M.A.No.1840 of 2015

Appeals against the fair and decretal order dated 18.04.2013, passed in M.C.O.P.No.487 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Coimbatore.

For Appellant in C.M.A.No.1840/15 .. Mr.M.Krishnamoorthy
and also for R3 - in CMA.19/15

For Appellant in C.M.A.No.19/15 .. Mr.Ma.Pa.Thangavel
FOR R1 - in CMA.1840/15

JUDGMENT
(Judgment of the Court was delivered by M.GOVINDARAJ, J.)

Challenging the award, dated 18.04.2013, passed in M.C.O.P.No.487 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Coimbatore, M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, has preferred C.M.A.No.1840 of 2015, on the grounds of negligence and quantum of compensation.

2. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred C.M.A.No.19 of 2015, seeking enhancement.

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3. For sake of convenience, the parties are called, as per the ranking given before the Claims Tribunal.

4. It is the case of the claimant that on 22.03.2012, about 06.55 A.M., she was proceeding as pillion rider, in a Motorcycle, bearing Registration No.TN 37 BQ 1000, driven by her husband, Mr.M.Karthikeyan, from East-West direction on Avinashi Road. Near KMCH Hospital, when the rider, after giving signal, turned the motorcycle to his right side, a lorry, bearing Registration No.TN 20 AM 3177, insured with M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, which came from behind, driven in a rash and negligent manner, hit the motorcycle, due to which, she fell down and her left leg was run over by wheel of the lorry. In the accident, the claimant had lost her limb and therefore, a claim petition in M.C.O.P.No.487 of 2012 was filed, claiming compensation of Rs.35,00,000/-.

5. Contradicting the statements made in the claim petition, M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, appellant herein, had denied negligence, on the part of the driver of the lorry, bearing Registration No.TN 20 AM 3177 and attributed negligence on the motorcyclist, on the basis of the rough sketch, prepared by the police. In any event, it was contended that it has to be considered only as composite negligence and therefore, the Insurance Company was not made liable for payment of compensation.

6. Based on the materials, the Tribunal has tried the claim, on the issues of rash and negligent act and the quantum of compensation. Before the Tribunal, to prove the claim, the injured has let in evidence as PW.1 and PW.2, is the Doctor, who spoke about her disability and loss of earning capacity. In respect of avocation and income, a representative from the Human Resources Department of KMCH Hospital, Coimbatore, has let in evidence as PW.3. In support of the claim, she marked Exs.P1 to P23. Driver of the lorry has let in evidence as RW.1 and no document was marked on the side of M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai.

7. Based on the evidence of PW.1 and Ex.P1 - FIR, Ex.P2 - Rough Sketch, Exs.P3 and P4 - Accident Registers, Ex.P5 - Charge Sheet and Ex.P20 - Fine paid by the driver of the lorry in S.T.C.No.408 of 2012, on the file of the Judicial Magistrate No.8, Coimbatore, the Claims Tribunal came to the conclusion that the driver of the lorry, was rash and negligent, in causing the accident. Accordingly, the insurer of the lorry, viz., M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, was held liable for payment of compensation.

8. Insofar as quantum of compensation is concerned, the Claims Tribunal has considered the documents, viz., Ex.P6 -

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Wound Certificate, Ex.P7 - Discharge Summary, Ex.P8 - X-Rays, Ex.P9 - Medical Bills, Ex.P10 - Receipt of remittance of an amount of Rs.56,361/-. Based on the injuries, sustained by the claimant and considering the amputation of left leg above knee, the Tribunal has determined the compensation at Rs.50,000/- towards permanent disability.

9. On the basis of evidence of PW.2, Doctor and upon perusal of Ex.P16 - Disability Certificate, the Claims Tribunal has taken the permanent disability to an extent of 80%. Exs.P12 to P14, are the pay slips for the months, viz., February' 2012, March' 2012 and July' 2012 respectively. Ex.P15 is the Saral Form for the assessment year 2012-13. Based on the above documents, the Tribunal has taken Rs.19,530/- as monthly income of the claimant and applied multiplier method, to an extent of 80% disability. After applying '16' multiplier, considering the age of the injured, the Tribunal has arrived at the loss of earning capacity at 29,99,808/-.

10. That apart, the Claims Tribunal has awarded Rs.1,13,000/- towards medical expenses and Rs.1,29,812/- towards costs, for fixing artificial limb. A sum of Rs.20,000/- is awarded under the head, pain and suffering. Besides, the Claims Tribunal has awarded Rs.5,000/- each, under the heads, transportation and extra nourishment. Thus, a total compensation of Rs.33,22,620/- was awarded by the Tribunal.

11. Not satisfied with the quantum of compensation, the claimant-injured has filed C.M.A.No.19 of 2015, stating that future prospects were not considered and compensation would have been more, if future prospects was awarded. Claimant has also sought for some more compensation towards future medical expenses, as she has to change the artificial limb, once in five years. No compensation was granted towards attendant charges. Award under the head, pain and suffering, is very meagre. The Tribunal ought to have awarded some more amount, towards transportation and extra nourishment. Claimant has also submitted that the compensation towards permanent disability should be enhanced.

12. Mr.M.Krishnamoorthy, learned counsel for M/s.Royal Sundaram Alliance Insurance Company Ltd., resisted the claim and submitted that negligence can be attributed only against the motorcyclist, who rode the motorcycle, carrying three persons, at high speed and took a sudden turn, towards right side, in front of the lorry and caused the accident and therefore, there should be some reduction in compensation, by applying contributory negligence.

Heard the learned counsel appearing for the parties and perused the materials available on record.

13. We have seen the evidence of RW.1, driver of the lorry, Registration No.TN 20 AM 3177, insured with M/s.Royal Sundaram

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Alliance Insurance Co. Ltd., Chennai. According to RW.1, the motorcyclist, dashed against the lorry, while taking right turn and attempted to go to KMCH Hospital. According to him, he was going straight on the road and the motorcyclist, which came from left side, had intentionally crossed the road and caused the accident. On his information, the Police came to the spot and investigation has been conducted. He was there for one hour at the spot, till the police inquired him and took the vehicle to the police station.

14. During cross-examination, RW.1, driver deposed that there are two important junctions in Avanashi road and the 2nd junction is at KMCH Hospital. He denied the suggestion that the motorcycle was dragged on, for some distance, before stopping the vehicle. According to RW.1, driver, the police, which came later to the accident spot, lodged FIR against him, at later point of time. It is very pertinent to note that when a suggestion was made to RW.1, driver of the lorry that tyre marks were marked only after the investigation made by the Police, he replied that he did not know about the same.

15. Learned counsel for he M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, would rely on Ex.P2 - Rough Sketch and submit that the Tribunal ought to have fixed the entire negligence on the rider of the motorcycle. Case of the claimant-injured that in order to turn right side, after giving signal, her husband turned the motorcycle and at that time, the driver of the lorry, which came from behind, hit the motorcycle and the wheels of the lorry, run over the injured, crushing her left leg.

16. Assessing the said situation and upon perusal of Ex.P4 - Accident Investigation Report, pertaining to the motorcycle, filed by the Motor Vehicles Inspector, Grade II, Regional Transport Office (South), Coimbatore, we could deduce that right side indicator of the motorcycle was damaged and there is a dent in the silencer guard. Apart from that, there are other damages to the motorcycle. Upon perusal of Ex.P3 - Accident Investigation Report, pertaining to the lorry, it is evident that there is a dent in the front registration number plate. From the above documents, it is evident that front registration number plate of the lorry dashed against the right side indicator and silencer guard of the motorcycle.

17. RW.1, driver has categorically stated that no sketch or tyre marks were marked by the police. Even assuming that the sketch was prepared by the police, burden is cast on the Insurance Company to summon the police and let in evidence to prove that the motorcyclist was negligent in causing the accident. Therefore, the evidence of RW.1, driver, is totally against the complaint made in Ex.P1 - FIR. Evidence of PW.1 goes to show against the rash and negligent driving of the driver of

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the lorry. Evidence of PW.1 is cogent and it is in conformity with Ex.P1 - FIR. Hence, the finding fixing negligence on the driver of the lorry, is confirmed. At the relevant point of time, the insurance policy issued by the appellant was in force. Hence, the finding on liability to pay compensation by the appellant, does not suffer any infirmity.

18. Insofar as the quantum of compensation is concerned, the injured was run over by the lorry and got her leg crushed. As per Ex.P7 - Discharge Summary, the injured claimant was finally diagnosed as follows:

> "RTA with crush injury foot and ankle left side. Open Grade IIIC 1. Lisfranc fracture, dislocation, phalangeal fracture of 2nd toe. 2. Bimalleolar fracture."

19. Because of the injuries suffered, left leg of the claimant-injured was amputated above knee. Since the injuries are grievous, assessment made towards permanent disability, by PW.2, Doctor, at 80%, is unacceptable and the same is reduced to 70%. However, the Claims Tribunal has awarded only Rs.50,000/- towards permanent disability. Following the decision of this Court National Insurance Co. Ltd., v. G.Ramesh reported in 2013 (2) TNMAC 583, we inclined to award Rs.3,000/- per percentage and computed the compensation at Rs.1,80,000/- (Rs.3,000/- x 70%), towards permanent disablement.

20. Insofar as loss of future prospects is concerned, the Tribunal has failed to award amount towards future prospects. Contention of the learned counsel for the claimant-injured, is supported by the judgment of the Hon'ble Supreme Court in Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343. Considering the age of the claimant-injured, we inclined to award 50% towards future prospects and the same works out to Rs.29,295/- (Rs.19,530/- x 9,765/- = Rs.29,295/-).

21. Annual income, after addition of 50% towards future prospects, works out to Rs.3,51,540/- (Rs.29,295/- x 12). Accident happened in the year 2012. There shall be a standard deduction of Rs.1,00,000/- and the annual income, which works out to Rs.2,51,540/-. Upto Rs.2 Lakhs, no amount shall be deducted towards income-tax and therefore, the remaining amount would be Rs.51,540/-, in which, 10% can be deducted towards Income-Tax and 3% towards education cess and the same would be worked out to Rs.5,309/-. After deducting the said sum from the annual income, loss of annual contribution works out to Rs.3,45,231/-. Loss of future earning, is now re-worked to Rs. 3,45,231/- x 16 x 70/100 = Rs.38,66,587/-.

22. Insofar as future medical expenses is concerned, it is the clear case of the claimant-injured that she has lost her

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left leg above knee and fixed with an artificial limb, for which, the Tribunal has awarded Rs.1,29,812/-. But the Tribunal has failed to take note of the fact that the artificial limb should be periodically replaced. There is clear evidence that the claimant-injured has to change the artificial limb, once in five years and maintain it. Therefore, considering the future requirement, an additional sum of Rs.1,29,812/- is awarded, under this head, in addition to the sum awarded by the Tribunal. However, the said compensation does not carry any interest.

23. Insofar as pain and suffering is concerned, the Tribunal has awarded Rs.20,000/- under the said head. The injured was working as Nursing Supervisor. She is qualified in Diploma in Nursing. After the completion of Bachelor of Business Administration, she is undergoing Master of Business Administration. By losing her leg, she has to sit idle and suffer, throughout her life. Therefore, following the judgment in Govind Yadav vs. The New India Insurance Company Limited, reported in (2011) 10 SCC 683, we deem it fit to award Rs.1,25,000/-.

24. Loss of amenities as per the Full Bench decision of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, is as follows:

> "deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one's work, loss of marriage prospects and loss of sexual function",

Considering the nature of injuries, which leads to amputation of left leg above knee, we inclined to award Rs.1,00,000/- towards loss of amenities.

25. Claimant-injured has got treatment for nearly 5 to 6 months. She had claimed attendant charges, as she could not move without the support of her personal attendants, for their assistance. Therefore, we award a sum of Rs.25,000/- under this head. Compensation of Rs.5,000/- each, awarded under the head, transportation and extra nourishment, is meagre and we inclined to increase by another sum of Rs.20,000/- under both the heads and accordingly, Rs.25,000/- each is awarded towards transportation and extra nourishment. Thus, by re-working, the total compensation is worked out, at Rs.47,19,211/-, as apportioned hereunder:

Disability	: Rs.1,80,000/-
Loss of future earning	: Rs.38,66,587/-
Medical expenses	: Rs.1,13,000/-
Future medical expenses	:Rs. 2,59,624/-

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Pain and suffering	: Rs.	1,25,000/-
Loss of amenities	: Rs.	1,00,000/-
Attendant Charges	: Rs.	25,000/-
Transportation	: Rs.	25,000/-
Extra nourishment	: Rs.	25,000/-
Total	: Rs.	47,19,211/-

Except the compensation awarded towards future medical expenses, other compensation shall carry interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

26. In the light of our discussion, C.M.A.No.19 of 2015 is allowed and C.M.A.No.1840 of 2105 is dismissed. M/s.Royal Sundaram Alliance Insurance Co. Ltd., Chennai, is directed to deposit the amount determined by this Court, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.487 of 2012, on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Coimbatore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same, by making necessary applications, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-co)

//True Copy//

Sub Assistant Registrar

skm
To

The Motor Accident Claims Tribunal,
(Chief Small Causes Court), Coimbatore.

Copy to:
The Section Officer,VR Section,High Court,Madras.(2 copies)

+1 CC TO MR.Ma.P.Thangavel, Advocate SR. No.43408
+1 CC TO MR.m.Krishnamoorthy, Advocate SR. No.43307

C.M.A.Nos.19 and 1840 of 2015

VGII(CO)
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