IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **06.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.2515 of 2015,
Cross. Objection No.54 of 2017
and M.P.No.1 of 2015

C.M.A.No.2515 of 2015

Royal Sundaram Alliance Insurance Company Ltd.,
No.8/191, Mangalam Building,
4 Roads, Omalur Main Road,
Salem - 636 009. .... Appellant / 2nd Respondent

Vs.

1. G.Karthikeyan ..... 1st Respondent / Petitioner

2. C.Kathiresan .... 2nd Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree, dated 03.06.2015 made in M.C.O.P.No.1227 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.P.Tamilavel for R1
No Appearance for R2

Cross Objection No.54 of 2017

G.Karthikeyan .... Cross Appeal/ 1st Respondent

Vs.

1. Royal Sundaram Alliance Insurance Co., Ltd.,
   No.8/191, Mangalam Building,
   4 Roads, Omalur Main Road,
   Salem - 636 009.

2. Kathiresan .... Respondents

Prayer : Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code to set aside the order, dated 03.06.2015 made in M.C.O.P.No.1227 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem and enhance the amount as prayed in the claim petition.

For Cross Objector: Mr.P.Tamilavel

For Respondents : Mr.N.Vijayaraghavan for R1
No Appearance for R2

COMMON JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

Challenging the award passed by the Motor Accident Claims Tribunal, Salem in M.C.O.P.No.1227 of 2013, dated 03.06.2015, the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal. The claimant / injured has also filed Cross-Objection in the above Appeal for enhancement of the compensation.

2. It is averred in the claim petition that the claimant aged 31 years while riding his motor cycle bearing Regn No.TN 52 Y 8115

with a pillion rider near Kamaneri TASMAC wine shop, tipper lorry bearing Regn. No.TN 30 AL 9696 coming from opposite direction was driven by its driver in a rash and negligent manner and hit the bike. Due to the accident, the claimant sustained grievous injuries. He was treated in Kurunji Hospital, Salem and then in Ganga Medical Centre Hospital, Coimbatore. The claimant was employed in a Private Consultancy Services (P) Ltd., as Electrical Engineering Technician and was earning Rs.20,000/- per month. He suffered disability of 100% due to the accident. The first respondent is the owner of the lorry and the lorry was insured with the second respondent. Therefore, both the owner and Insurance company are liable to pay the compensation.

3. The Insurance Company in its counter denied the place, date, time and manner of the accident. The age, income, occupation, nature of injuries and medical expenses are also denied. The accident is a head on collision of a two wheeler and the lorry insured with the second respondent / insurance company. The claimant on seeing the lorry coming in front of him could not control his speed and hit the lorry. The lorry owner had no lorry permit and the driver of the lorry was not in a possession of a valid driving license. The quantum of compensation claimed are excessive and

highly exaggerative.

4. The Tribunal permitted the Insurance Company to avail all or any other defence that the owner may plead by allowing the application filed by the Insurance Company under Section 170 of MV Act.

5. On the side of the claimant, four witnesses were examined and 23 exhibits and also Ex.X.1 and Ex.X.2 marked. No oral or documentary evidence was let in on the side of the Insurance company. The Motor Accident Claims Tribunal, after analysing both oral and documentary evidence, ordered the Insurance Company to pay a compensation of Rs.30,17,000/- with interest at the rate of 7.5% from the date of petition to the claimant.

6. It is contended on the side of the appellant that the loss of earning capacity is not proportionate to the injuries sustained by the claimant and adoption of future prospects is also not correct. It is further contended that the award on various heads are all excessive.

7. It is contended on the side of the first respondent by

way of filing Cross-Objection that the loss of earning power is to be calculated to the percentage of the disability as given by the Doctor, as the disability arrived at by the Doctor is for the whole body and not for any particular limb. The Tribunal has not considered transportation charges and compensation for marital prospects. Therefore, the compensation awarded by the Tribunal is bound to be enhanced.

8. The claimant examined as P.W.1 has deposed that on 02.04.2012 when he was riding his motor cycle with a pillion rider on the left side of the road near the 5th mile stone wine shop, a lorry bearing Regn. No. TN 30 AL 9696 coming from opposite direction was driven by its driver rashly and negligently and hit against him. His evidence could not be shattered in any way during cross-examination. FIR was registered against the lorry driver and the same is marked as Ex.P.1. The copy of the rough sketch drawn by the Investigating Officer marked as Ex.P.5 discloses that the claimant while riding his bike on the left side of the road, the lorry coming from opposite direction hit him on the wrong side. Furthermore, the Driver of the lorry admitted his guilt and he has been convicted as could be seen from the Certified copy of the Judgment, Ex.P.7. There is also no rebuttal evidence on the side of the respondent. Therefore, it is clear that the accident occurred only

due to the rash and negligent driving of the lorry driver.

9. There is no dispute that the offending lorry was insured with the appellant / second respondent. In the MVI Report, Ex.P.3, policy number of the lorry has also been mentioned. Due to the accident, the claimant sustained multiple fractures in right thigh, right leg, pelvis and right knee, as could be seen from Ex.P.2, Wound Certificate. Initially he took treatment in Kurunji Hospital at Salem from 02.04.2012 to 22.05.2012 and then in Ganga Medical Centre Hospital, Coimbatore in six spells as evinced from the Discharge Summaries, Ex.P.12 to Ex.P.17.

10. At the time of accident, the claimant was working as Technician in a Private Consultancy Services Ltd. The General Manager of the private concern examined as P.W.4 has deposed that the claimant was appointed in the company from 23.08.2007 and he had been working in the company till the date of accident. The appointment order is marked as Ex.P.21. The salary chart marked as Ex.P.23 discloses that just before the accident, he got a monthly salary of Rs.10,730/-.

11. The claimant was aged about 31 years at the time of accident. The Constitutional Bench of the Hon'ble Supreme Court,

while settling the issue of future prospects to a self-employer or on a fixed salary has held in the **National Insurance Company Ltd., v. Pranay Sethi and Ors**., in its Judgment, dated 31.10.2017 in SLP (Civil) No.25590 of 2014 etc., batch as follows :

> "61...
> ...
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

12. In disability cases, loss of earning capacity is to be taken into account on the basis of the disability and the principle of multiplier is to be applied so as to award compensation in uniformity. In this case on hand, disability has been calculated by the Doctor for the whole body and not for a particular limb. The General manager of the company where the claimant was employed also deposed in 2015 that the claimant had not attended duty after

the accident which occurred in 2012. Therefore the loss of earning capacity of the claimant is to be taken as 50% taking the disability fixed by the Doctor for the whole body into account.

13. Following the above dictum, considering the age of the claimant, 40% has to be added towards future prospects. Therefore, adding the future prospects, the monthly income of the claimant is to be taken as Rs.15,030/-. Therefore the loss of earning power is fixed at Rs.14,42,880/- (Rs.15,030 x 12 x 16 x 50/100).

14. For actual medical expenses, the original bills have been marked as Ex.P.8 series. The respondent Insurance company has not cross-examined the witness with respect to any particular bill marked in Ex.P.8 series as to its genuineness.

15. The Tribunal has not awarded any compensation towards transportation. The claimant took treatment in Salem Kurunji Hospital and in Ganga Hospital at Coimbatore in six spells. Even if the bills for transportation filed by the claimant are not conceded, considering the treatment, the claimant took in several spells in far of places from his native place, it is just to fix the

transportation charges at Rs.25,000/-. The compensation awarded under other heads by the Motor Accident Claims Tribunal does not require any interference. Thus, the compensation is enhanced under the head of loss of earning power from Rs.13,39,200 to Rs.14,42,880/- and Rs.25,000/- is awarded towards transportation charges. Hence the total compensation comes to Rs.31,45,680/-. Thus the enhancement would be Rs.1,28,680/-.

16. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. The Cross Objection is partly allowed and the impugned award of the Tribunal is modified to the extent as stated supra. The claimant will be entitled to the said sum of Rs.1,28,680/- in addition to what is already awarded by the Tribunal, with interest at 7.5% per annum from the date of petition till the date of realisation. No costs.

The Insurance company is directed to deposit the enhanced award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit less the amount already deposited, if any, to the credit of M.C.O.P.No.1227 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem, within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount lying in court deposit. It is needless to state that the claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this Judgment.

(**A.S., J.**) (**P.K., J.**)

06.11.2017

Index : Yes / No

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To

The Motor Accident Claims Tribunal /
Special Subordinate Court No.1
Salem.

A.SELVAM, J.
AND
P.KALAIYARASAN, J.

tsvn

Pre-Delivery Common Judgment in C.M.A.No.2515 of 2015 and Cross Objection No.54 of 2017

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