

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.11.2017

Judgment Pronounced on : 01.12.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.1348 to 1351 of 2009
and MP.Nos.1 to 1 of 2009
& Cros.Obj.Nos.85 to 88 of 2016

CMA.Nos.1348 to 1351 of 2009 :
Royal Sundaram Alliance Insurance Co. Ltd.
Sundaram Tower,
45, Whites Road,
Chennai - 14. Appellant in all CMAs

-Vs-

1.K.Kannan .. 1st respondent in CMA.No.1348 of 2009
2.R.Gurusami .. 1st respondent in CMA.No.1349 of 2009
3.M.A.Sengodan .. 1st respondent in CMA.No.1350 of 2009
4.Selvi .. 1st respondent in CMA.No.1351 of 2009
5.Minor Senthamil .. 2nd respondent in CMA.No.1351 of 2009
6.Minor Amsaveni .. 3rd respondent in CMA.No.1351 of 2009
7.Bharath .. 4th respondent in CMA.No.1351 of 2009
8.K.M.Muthukumar .. 2nd respondent in CMA Nos.1348 to
1350 of 2009
.. 5th respondent in CMA.No.1351 of 2009
9.M.Murugesan .. 3rd respondent in CMA.Nos.1348 to 1350 of 2009
.. 6th respondent in CMA.No.1351 of 2009

Cros.Obj.Nos.85 to 88 of 2016:

1.K.Kannan .. Cross objector in Cross Appeal No.85 of 2016
2.R.Gurusamy .. Cross objector in Cross Appeal No.86 of 2016
3.S.A.Sengodan .. Cross objector in Cross Appeal No.87 of 2016
4.Selvi .. 1st Cross objector in Cross Appeal No.88 of 2016
5.Minor Senthamizh .. 2nd Cross objector in Cross Appeal No.88 of 2016
6.Minor Amsaveni .. 3rd Cross objector in Cross Appeal No.88 of 2016
7.Minor Bharath .. 4th Cross objector in Cross Appeal No.88 of 2016

(Minors 2 to 4 in Cross Appeal No.88 of 2016 are
represented by their mother and natural guardian Selvi)

Vs

1.The Manager,
Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers, 46, Whites Road, Chennai - 600 104.

2.K.M.Muthukumar

3.M.Murugesan .. Respondents in all Cross Appeals

Common Prayer in CMA Nos.1348 to 1351 of 2009:- Civil Miscellaneous Appeals under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2008 made in OP.Nos.273 of 2007, 274 of 2007, 279 of 2007 and 329 of 2007 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Court) at Bhavani, Erode District.

Common Prayer in Cross Appeal Nos.85 to 88 of 2016 :- Cross Appeals filed under Order 41 Rule 22 of CPC to enhance the award amount in the decree and judgment in MCOP.Nos.273 of 2007, 274 of 2007, 279 of 2007 and 329 of 2007 respectively dated 25.11.2008 on the file of the Motor Accidents Claims Tribunal (Subordinate Court) at Bhavani, Erode District.

In CMAs:

For Appellant : Ms.R.Sreevidhya
For Respondents : Mr.Ma.Pa.Thangavel
[for R1 in all CMAs]
[for R2 to R4 in CMA.No.1351/2009]
No appearance for R2 & R3
in CMA Nos.1348 to 1350 of 2009
and R5 & R6 in CMA.No.1351 of 2009

In Cross Appeals:

For Cross Objectors : Mr.Ma.Pa.Thangavel
For Respondents : Ms.R.Sreevidhya [for R1]
No appearance [R2 & R3]

COMMON JUDGMENT

1. In a road accident that took on place at about 7 a.m. on 03-07-2007 when an Omni van bearing No: TN 36 J 8037 dashed against a road side tree, thanks to the negligent driving of its driver, three of its passengers were injured while one was killed. All of them were employees of Tamil Nadu Electricity Board (as it then existed).

2. The victims or their legal heirs, as the case may be, moved the Tribunal with separate Claim petitions. For the details of amount claimed and awarded in each of the four cases, the tabular column herein below may be referred to:

S. N	CMA. No.	MCOP.No.	Death/ Injury	Amount Claimed	Amount Awarded
1.	1348 of 2009	273 of 2007	Injury	6,00,000.00	1,86,100.00
2.	1349 of 2009	274 of 2007	Injury	5,00,000.00	2,04,500.00

S. N	CMA. No.	MCOP.No.	Death/ Injury	Amount Claimed	Amount Awarded
3.	1350 of 2009	279 of 2007	Injury	5,00,000.00	1,11,080.00
4.	1351 of 2009	329 of 2007	Death	25,00,000.00	13,64,920.00

3. Before the Tribunal, the appellant/insurance company of the Van inter alia took up a plea that the van had a total seating capacity for only 4 passengers besides the driver, but it was packed in all with eight passengers, and hence there is no policy cover for all, and consequently, it is not liable. This was negated by the Tribunal.

4. The appellant challenges the award, both on grounds of its liability to pay the compensation and also the quantum of compensation awarded. All the claimants in all the four cases have preferred cross-objections challenging what they consider as inadequate compensation awarded by the Tribunal.

5. As to the contention of the appellant, that it is not liable to pay the compensation inasmuch as the van in question was loaded more than its seating capacity is concerned, this Court finds no infirmity in the finding of the Tribunal when it held that since the claim made is limited only to the extent of the seating capacity of the van in question, the objection by the appellant was rejected. This leaves the objection as to the quantum as well as the inadequacy of the same alone requires to be considered.

6. CMA.No.1348 of 2009 :

In this case, the claimant is said to have suffered fracture of left ankle, feet, and both tibia and fibula of the left leg, besides fracture of right ankle. Even after surgical corrections attempted, the claimant's left fibula has not united while left tibia has malunited, and the post injury consequence that the claimant was required to endure included his inability to sit, stand, climb stair case and standing for long time. The Tribunal has accepted the medical opinion of P.W.5, who assessed the extent of permanent disability of the claimant at 37% and awarded a compensation on this head at Rs.1,500/- for every percentage of compensation. The break up of the award passed by the Tribunal reads:

Heads of compensation	Amount Awarded (Rs.)
Towards pain and suffering	35,000.00
Permanent Disability (37% @ Rs.1500/- per % of disability)	55,500.00

Heads of compensation	Amount Awarded (Rs.)
Transportation	4,000.00
Medical Expenses	86,561.13
Extra nourishment	5,000.00
Total :	1,86,061.13 (rounded to 1,86,100.00)

Primarily, this Court does not find anything in the award to which the appellant can take exception to. However, turning to the cross objection of the claimant as to the inadequacy of the compensation awarded, this Court finds that there is some merit. Given the nature of employment, it cannot be said that there indeed was any functional disability. However, there is far serious impact on the quality of life of the claimant, which this Court cannot overlook. Permanent disability is required to be compensated at Rs.2,500/- per percentage of injury and accordingly the compensation payable on this head is Rs.92,500/-. For pain and suffering Rs.1,00,000/- should be the just and fair compensation. It should not be forgotten that the appellant has undergone multiple surgeries and was hospitalised for 27 days. For loss of amenities and for assistance Rs.10,000/- each is awarded. As to the other heads of compensation, the award of the Tribunal is confirmed. In all the compensation payable is increased to Rs.3,08,100/-

7. CMA.No.1349 of 2009 :

In this case, the claimant is said to have suffered fractures of left femur, left leg, fractures to left and right ankle, right frontal and both the facial bones besides simple abrasions. Even after surgical treatment the claimant's left femur and fibula of both the legs, fibula has not united while left tibia has malunited, and the post injury consequence that the claimant is forced to experience essentially included his inability to move his right hip which moves only marginally, both the knees, etc., The Tribunal has accepted the medical opinion of P.W.3 who assessed the extent of permanent disability of the claimant at 60% and awarded a compensation on this head at Rs.1,500/- for every percentage of compensation. The break up of the award passed by the Tribunal reads:

Heads of compensation	Amount Awarded (Rs.)
Towards pain and sufferings	35,000.00
Transportation	4,500.00
Towards medical expenses and nourishment	75,000.00

Heads of compensation	Amount Awarded (Rs.)
Permanent disability (60% @ Rs.1500/- per % of disability)	90,000.00
Total :	2,04,500.00

As in the earlier case this Court does not find anything in the award to which the appellant can take exception to. However, turning to the cross objection of the claimant as to the inadequacy of the compensation awarded, this Court finds that there is some merit. Given the nature of employment it cannot be said that there indeed was any functional disability. However, there is far serious impact on the quality of life of the claimant, which this Court cannot overlook. Permanent disability is required to be compensated at Rs.2,500/- per percentage of injury and accordingly the compensation payable on this head is Rs.1,50,000/-. For pain and suffering Rs.1,00,000/- should be the just and fair compensation. It should not be forgotten that the appellant has undergone multiple surgeries and was hospitalised for 24 days. For loss of amenities and for assistance Rs.10,000/- each is awarded. In all the compensation payable is increased to Rs.3,49,000/-.

8. CMA.No.1350 of 2009:

The claimant here has suffered fracture of left pelvic bone, and fracture of left leg and he was hospitalised for 11 days and has been surgically treated for his fractures. P.W.7, who has evaluated the extent of disability that the victim has suffered has stated that his left hip joint lost substantial part of its mobility, that he cannot do ordinary aspects of life like walking, squatting on the floor, or use the lavatory, cannot climb up or down the stairs, cannot ride bicycle etc and ascertained the extent of disability of the claimant at 32%. As in earlier cases, Tribunal awarded a compensation on this head at Rs.1,500/- for every percentage of compensation. The break up of the award passed by the Tribunal reads:

Heads of compensation	Amount Awarded (Rs.)
Towards pain and sufferings	30,000.00
Transportation	4,500.00
Towards extra nourishment	3,000.00
Permanent disability (32% @ Rs.1500/- per % of disability)	48,000.00
Towards medical expenses	25,581.00

Heads of compensation	Amount Awarded (Rs.)
Total :	1,11,081.00

This Court has already indicated in the earlier two cases that from the stand point of the appellant, it cannot take exception to the quantum of compensation awarded as excessive. However, turning to the cross objection of the claimants as to the inadequacy of the compensation awarded, this Court finds that there is some merit. Against like in other two cases, given the nature of employment it cannot be said that there indeed was any functional disability which the claimant had encountered. In my view, the permanent disability is required to be compensated at Rs.3,000/- per percentage of injury more so because the injury to hip can let someone live peacefully. Accordingly, the compensation payable on this head is Rs.96,000/-. For pain and suffering, Rs.75,000/- should be the just and fair compensation. For extra nourishment, loss of amenities and for assistance Rs.10,000/- each is awarded. In all the compensation payable is enhanced to Rs.2,31,081/- and rounded off to Rs.2,31,100/-.

9. CMA.No. 1351 of 2009:

Its a case of death. The Tribunal has compensated the loss of support that the victim could have given his family based on Ext.P-28 salary certificate. Where it is flawed is not specifically pointed out by the appellant. That his home take salary may be only Rs.3,715/- but which of the deductions from his gross monthly salary of Rs.10,139/- is not specifically stated. His contribution to provident fund, or repayment of loan etc., cannot be deducted for the purpose of calculating the monthly salary of the victim. The Award passed by the Tribunal reads as follows:

Heads of compensation	Amount Awarded (Rs.)
Loss of future income	12,97,920.00
Towards loss of love and affection to widow of the victim	15,000.00
Towards loss of love and affection for 3 children @ Rs.15000/- each	45,000.00
Transportation	2,000.00
Funeral expenses	5,000.00
Total :	13,64,920.00

So far as the cross objection goes, the only head on which some interference is required is on the head of loss of love

and affection to the widow of the victim. This is enhanced from Rs.15,000/- to Rs.25,000/-. In all the total compensation payable is enhanced to Rs.13,74,920/-, rounded off to Rs.13,75,000/-

10. In the end, all the four appeals in CMA.Nos.1348 to 1351 of 2009 are dismissed and the corresponding cross-objections are partially allowed in the manner indicated below:

Cross Objections filed by the claimants	Amount Enhanced (Rs.)
Cros.Obj.No.85 of 2016	3,08,100.00
Cros.Obj.No.86 of 2016	3,49,000.00
Cros.Obj.No.87 of 2016	2,31,100.00
Cros.Obj.No.88 of 2016	13,75,000.00

The appellant/insurance company is directed to deposit the enhanced award of compensation along with accrued interest at 6% p.a., less any amount already deposited within a period of six weeks from the date of receipt of a copy of this order and the claimants are permitted to withdraw the same forthwith, in the ratio as it was done by the Tribunal. The claimants are not entitled to any interest during the period of delay in filing the cross-objections, if any. No costs. Consequently, connected miscellaneous petitions are closed.

ds

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

1.The Sub Judge
Motor Accidents Claims Tribunal
Bhavani at Erode District.

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

+4cc to Mr.Santhanam, Advocate SR.No.78603,78605,78606,78607
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.78827

Judgment in
C.M.A.Nos.1348 to 1351 of 2009
& Cros.Obj.Nos.85 to 88 of 2016

MG (CO)
sm:8.1.2018