



WEB COPY

JBETORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A. (MD) No.1386 of 2016

&

C.M.P (MD) Nos.11580 of 2016 and 1456 of 2017

and

CROS.OBJ (MD) No.5 of 2017

C.M.A (MD) No.1386 of 2016

The Royal Sundaram Alliance Insurance
Co-operative Limited,
Vannarpet, Tirunelveli.
Rep. By Branch Manager.

... Appellant/ 2nd Respondent

Vs.

1.Abdul Rahman
2.Prasanna

...1st Respondent / Petitioner
...2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 14.03.2016 made in MCOP No. 66 of 2013 on the file of Motor Accident Claims Tribunal, (Sub Court), Aruppukottai, and allow this civil miscellaneous appeal.

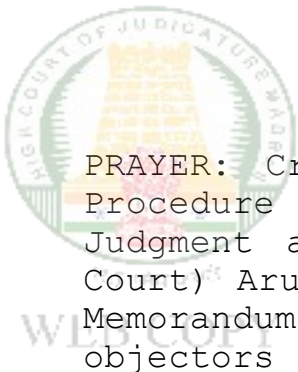
For Appellant	: Mr. S.Srinivasa Raghavan
For Respondent No.1	: Mr.Veera Kathiravan Senior Counsel For M/s.D.Farjana Ghoushia
For Respondent No.2	: No appearance

Cross Objection No.5 of 2017

Abdul Rahman ... Cross Objector/ 1st Respondent/petitioner

Vs.

1.The Royal Sundaram Alliance Insurance
Co-operative Limited,
Vannarpet, Tirunelveli.
Rep.By Branch Manager. .. 1st Respondent/ Appellant/2nd Respondent
<https://hcservices.ecourts.gov.in/hcservices/>
2.Prasanna ...2nd Respondent/2nd respondent/1st respondent



PRAYER: Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code 1908 as amended by Act 104 of 1976, against the Judgment and Decree of the Motor Accident Claims Tribunal (Sub Court) Arupukottai in M.C.O.P.No.66 of 2013, dated 14.03.2016 and Memorandum of Grounds was served on the Respondents/ Cross objectors on 28.02.2008.

For Appellant : Mr.Veera Kathiravan
Senior Counsel
For M/s.D.Farjana Ghoushia
For Respondent No.1 : Mr. S.Srinivasa Raghavan
For Respondent No.2 : No appearance

Judgment reserved on : 05.04.2017
Judgment delivered on : 19.04.2017

COMMON JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

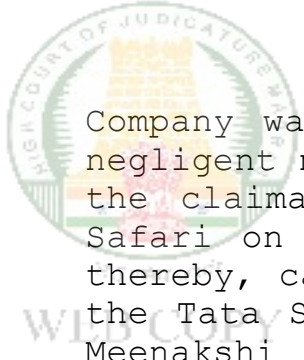
The appellant / 2nd respondent / Insurance Company in the claim application has filed this Civil Miscellaneous Appeal against judgment and decree dated 14.03.2016 passed in M.C.O.P.No.66 of 2013 by the Motor Accident Claims Tribunal (Sub Court), Arupukottai.

2.The Tribunal awarded a sum of Rs.60,32,500/- (Rupees Sixty Lakhs Thirty Two Thousand and Five Hundred only) as compensation for the injury sustained by the 1st respondent / claimant. The 1st respondent / claimant has filed the Cross Objection. Both cases were taken up for consideration and common Judgment is pronounced.

3.The appellant / Insurance Company is the second respondent, the 1st respondent is the claimant, the second respondent is the owner of the vehicle namely, Eicher Lorry bearing Registration No.TN-69-AV- -1889 in M.C.O.P.No.66 of 2013.

4.The first respondent / claimant filed the claim petition claiming a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) as compensation for the permanent disability sustained by him in the road accident which occurred on 30.12.2012.

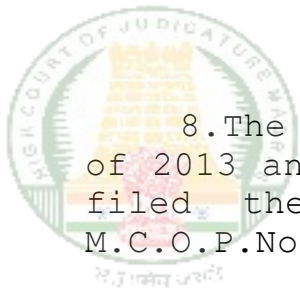
5.The case of the claimant / 1st respondent in the claim petition is that on 30.12.2012, at about 01.05 hours at Panthalkudi-NH 45B Road near by vilakkur road an instalation work in a petrol bulk was going on, the claimant and his four friends had gone there for supervising the said work and parking their Tata Safari Car near the bulk, were standing in front of their vehicle namely, Tata Safari bearing Registration No.TN 67 AC 3339 and at that time, the lorry belonging to the 2nd respondent / 1st respondent insured with the appellant / 2nd respondent / Insurance



Company was proceeding from North to South driven in a rash and negligent manner, without following traffic rules and thereby, hit the claimant and others, who were standing in front of the Tata Safari on the mud road and also dashed against said vehicle and thereby, caused injuries to the claimant and others and damages to the Tata Safari. Immediately, the claimant was taken to Madurai Meenakshi Mission Hospital and admitted as inpatient and his two legs were amputated due to the injuries sustained in the accident. At the time of accident, the claimant was aged about 25 years. He completed Catering Course and planned to go to foreign countries for catering job in the Three Star Hotel. At the time of accident, he was working in a hotel and was earning a sum of Rs.30,000/- per month. Due to the accident, he lost his two legs for the injuries sustained by him and therefore, he was not able to do any work as he was doing earlier and also lost his future. Hence, the driver of the lorry was responsible for the accident. As the said lorry was insured with the appellant / 2nd respondent / Insurance Company, both the owner of the lorry and the Insurance Company are jointly and severally liable to pay the compensation. The claimant claimed a sum of Rs.1,50,00,000/- (Rupee One Crore and Fifty Thousand only) as compensation before the Tribunal.

6.The second respondent / first respondent remained ex-parte before the Tribunal.

7.The case of the appellant / second respondent / Insurance Company is that the accident was not occurred due to the rash and negligent act of the driver of the offending vehicle Eicher Lorry. On 30.12.2012 at about 1.15 am., near Panthalgudi Vilaku Road in Madurai to Thoothukudi NH 45 road, when the lorry proceeding from North to South, at the time, the Tata Safari Car was parked on the middle of Madurai to Thoothukudi main road, without any parking indications. The driver of the lorry, who was proceeding from North to South, was under the impression that the said car was in moving condition. However, when the lorry nearing to the car, then only he realized that the car was parked in the middle of the road. Due to which, the driver of the lorry was not able to control the vehicle and thereby dashed against the parked car. Thereafter, the driver of the lorry came to know that the persons, who travelled in the Tata Safari Car, were standing in front of the above said vehicle in dark place. Hence, according to the 2nd respondent, the accident occurred only due to the negligence act on the part of the claimant. Hence, the appellant / 2nd respondent is not liable to pay any compensation to the claimant as the accident had occurred only due to the negligent act of the claimant. At the time of accident, the driver of the lorry, belonging to the first respondent, did not possess any valid driving licence. Hence the appellant / 2nd respondent / Insurance Company is not liable to pay any compensation to the claimant.



8. The Tribunal had passed Common Order in M.C.O.P.Nos.66 to 70 of 2013 and the appellant / 2nd respondent / Insurance Company has filed the present Civil Miscellaneous Appeal only against M.C.O.P.No.66 of 2013.

9. In order to prove the case of the claimant, first respondent / claimant examined himself as P.W.1 and one Dr.Chidambaram, was examined as P.W.6 and marked Exs.P.1 to Ex.P.20, Ex.P.37 and Ex.P.38. The appellant / second respondent / Insurance Company did not let in any oral and documentary evidence.

10. After considering the averments made in the claim petition, counter affidavit and also considering the oral and documentary evidence let in, the Tribunal came to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the lorry belonging to the 2nd respondent / 1st respondent and the Tribunal has awarded a sum of Rs.60,32,500/- (Rupees Sixty Lakhs Thirty Two Thousand and Five Hundred only) as compensation under the following heads:

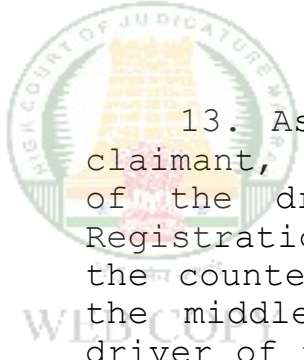
(i) For Loss of Income and for future prospects	:	Rs.28,08,000/-
(ii) Pain and Sufferings	:	Rs. 2,00,000/-
(iii) Loss of Consortium	:	Rs. 2,00,000/-
(iv) Transportation	:	Rs. 50,000/-
(v) Medical expenses (MMH)	:	Rs. 3,41,000/-
(vi) Medical expenses (MIOT)	:	Rs. 8,53,000/-
(vii) Blood Bank expenses	:	Rs. 20,500/-
(viii) Loss of Dress	:	Rs. 5,000/-
(ix) Nursing and Attendant	:	Rs. 50,000/-
(x) Nutrition	:	Rs. 30,000/-
(xi) Artificial legs	:	Rs. 2,75,000/-
(xii) Artificial permanent legs	:	Rs.12,00,000/-

Total		Rs.60,32,500/-

11. Aggrieved with the impugned award, the appellant / Insurance Company has come out with the Civil Miscellaneous Appeal and the first respondent / claimant has come out with the Cross-Objection for enhancement of compensation.

12. Points for consideration arose in this Civil Miscellaneous Appeal are as follows:

1. Whether the accident had occurred due to the negligent act of the driver of the first respondent lorry bearing Registration No.TN-69-AV-1889?
2. Whether the award passed by the Tribunal is just and reasonable?
3. To what other relief the claimant is entitled?



13. As far as negligent part is concerned, according to the claimant, the accident had occurred due to the negligent driving of the driver of the first respondent Eicher Lorry bearing Registration No.TN-69-AV-1889. The appellant / 2nd respondent in the counter statement stated that the Tata Safari was parked on the middle of the road without any parking indications. The driver of the first respondent's vehicle lost his control and that dashed against the parked car. Then only he came to know that some of the persons, who had travelled in the Tata Safari, were standing in front of the above said vehicle in a dark place. The accident had occurred only due to the act of the claimant as he did not adhere to the traffic rules and regulations. In order to prove the manner of the accident, the claimants in MCOP Nos.67 to 70 of 2013 were examined as witnesses and they have deposed that the accident had occurred only due to rash and negligent driving of the driver of the lorry. A complaint was lodged and First Information Report was also registered only against the driver of the lorry and there is no contra evidence on the side of the respondents to disprove the same. Even though the respondents had denied the manner of the accident, but the driver of the lorry had not come to the witness box and denied the same. Considering all the above aspects, this Court finds that the accident occurred only due to rash and negligent driving of the driver of the Eicher Lorry bearing Registration No.TN-69-AV-1889. Since the first respondent's offending lorry was insured with the second respondent, both the respondents are jointly and severally liable to pay compensation to claimant. This point is answered accordingly.

14. As far as the quantum of compensation is concerned, according to the claimant, he has completed catering course and planned to go to abroad for catering job in a Three Star Hotel and prior to the accident, he was working in a private hotel and earning a sum of Rs.30,000/- per month. Due to the accident, his two legs were amputated and that he lost his future and hence, he could not do any work. Therefore, the respondents have to pay compensation to the claimant.

(i) As far as the income of the claimant is concerned, he has not produced any salary certificate. The only document produced by the claimant is Ex.P.18 - School Transfer Certificate issued by the Department of School Education reveals that he has studied upto 10th standard. Ex.P.16 is the Industrial School Certificate issued by the Department of Employment and Training, Chennai, reveals that he has completed the course of Training at OSCAR Institute of Hotel Management and Catering Industrial School, Kovilpatti. Therefore, in the absence of any document to prove the income of the claimant, the Tribunal has fixed at Rs.15,000/- as notional monthly income of the claimant. Considering the qualification of the claimant and the disability sustained due to accident, this Court is of the opinion that in the absence of any



documentary evidence a sum of Rs. 7,500/- per month would be reasonable for calculating loss of income.

(ii). In Ex.P.18 the date of birth of the claimant was mentioned as 16.05.1990 and the date of accident is 30.12.2012 and therefore, at the time of accident, the claimant was aged about 23 years. Since both legs of the claimant were amputated, the doctor assessed the disability at 100%.

(iii).The Tribunal, taking note of the age of the claimant, applied the multiplier as 18. However, at the same time future raise in income is also required to be considered. But no amount towards future prospects was added, the injured was hardly 23 years old and therefore 50 % has to be added towards future prospects.

(iv).The Hon'ble Apex Court in the judgment in **State of Himachal Pradesh and others /vs./ Naval Kumar reported in 2017 ACJ 701** held as follows:

"14.The Short question that arises for consideration in this appeal is whether the High Court, the facts and circumstances of the case, was justified in awarding Rs.1,25,00,000/- to the respondent by way of compensation for the injuries sustained by the respondent in an accident which occurred on 18.03.2012?

15.The High Court held and, in our view, rightly that the incident in question occurred due to negligence of the State and its authorities and hence the State was vicariously liable to compensate the respondent for the losses sustained by the respondent. It may be mentioned that the State rightly did not challenge this finding and hence we need not go into its correctness. The High Court further held and, in our view, rightly that having regard to the family background of the respondent and further respondent's excellent performance as a brilliant student in studies, he would have easily earned Rs.30,000/- per month in his life. We find no good ground to interfere in this finding of fact, which, in our opinion, is based on proper material on record.

16.The High Court, however, further awarded Rs.10,00,000/- towards loss of companionship, life amenities/pleasures, and happiness, Rs.10,00,000/- for pain and suffering, mental distress, trauma, discomfort and inconvenience, Rs.10,00,000/- towards attendant/nursing expenses, and lastly, Rs.5,00,000/- for securing artificial/robotic limbs and future medical expenses. In our considered view, the award of compensation under these 4 heads appears to be on very higher side and is not supported by any

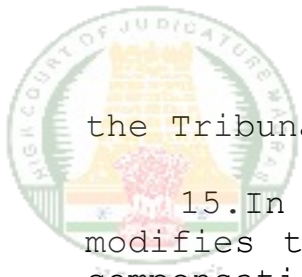


evidence. It is, in our view, based on assumptions and presumptions to which we do not concur. In our view, entitlement under these heads is one thing and the quantum of grant of compensation under these heads is another thing. In this case, as rightly urged by the learned counsel for the appellant State, lump sum award of compensation under these heads is on the higher side and is not supported by any evidence. It is, therefore, not legally sustainable."

Therefore, in above said case the loss of income and future prospects were fixed based on material records.

(v). In this case on hand, the claimant studied upto 10th standard only and he has completed certificate course of Catering. However, he has not produced any employment certificate or income certificate to prove his monthly salary. He has also not proved the income and avocation, hence, considering the technical qualification he has possessed, Rs. 7,500/- is fixed as notional monthly income of the injured. As per the ruling of the Supreme Court reported in 2017-ACJ-701 (cited supra), the award of compensation under the head of loss of income is not supported by any evidence. It is, in our view, based on assumptions and presumptions to which we do not concur. In this case, as rightly contended by the learned counsel for the appellant, the award of compensation under the head of loss of income is on higher side and is not supported by any evidence. It is, therefore, not legally sustainable. Hence, we are of the view that the Tribunal was not right in assessing the monthly income of the claimant. Under the circumstances this Court modifies the monthly income of the claimant at Rs.7,500/- as notional income. In view of the judgments reported in **2009(5) LW 561 (Sarala Verma Vs. Delhi Transport Corporation)** and **2015(1) TNCJ 301 (MAD)** and the future prospects of the claimant is fixed at 50%. Therefore, the loss of income and also future prospects at Rs.7,500/- + Rs.3,750/- = Rs.11,250/- X 12 X 18 = Rs.24,30,000/-

vi). As far as the other heads of compensation are concerned, the Tribunal had awarded a sum of Rs.2,00,000/- for Pain and Sufferings, a sum of Rs.50,000/- for Transportation, a sum of Rs.3,41,000/- for Medical expenses, (Meenakshi Mission Hospital), a sum of Rs.8,53,000/- for Medical expenses (MIOT Hospital), a sum of Rs.20,500/- for Blood Bank expenses, a sum of Rs.5,000/- for Loss of Dress, a sum of Rs.50,000/- for Nursing and Attendant, a sum of Rs.30,000/- for Nutrition, a sum of Rs.2,75,000/- for Artificial legs, a sum of Rs.2,75,000/- for Artificial permanent legs, which are reasonable and the same need not be interfered by this Court and accordingly, the same remain unaltered. Therefore, the award of the Tribunal is modified with regard to loss of income, future prospects, loss of consortium, nursing and attendant and nutrition alone. The rate of interest awarded by

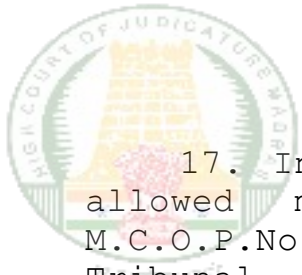


the Tribunal at 7.5% per annum remains unaltered.

15. In view of the settled proposition of law, this Court modifies the award of the Tribunal by reducing and modifying the compensation, as below:-

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	For Loss of Income and for future prospects	28,08,000	24,30,000	Modified
2.	For Pain and Sufferings	2,00,000	2,00,000	Confirmed
3.	For Loss of Consortium	2,00,000	Not Applicable	Not Applicable
4.	For Transportation	50,000	50,000	Confirmed
5.	For Medical expenses (MMH)	3,41,000	3,41,000	Confirmed
6.	Medical expenses (MIOT)	8,53,000	8,53,000	Confirmed
7.	For Blood Bank expenses	20,500	20,500	Confirmed
8.	For Loss of Dress	5,000	5,000	Confirmed
9.	Nursing & Attendant	50,000	1,00,000	Enhanced
10.	Nutrition	30,000	50,000	Enhanced
11.	Artificial legs	2,75,000	2,75,000	Confirmed
12.	Artificial permanent legs	12,00,000	12,00,000	Confirmed
	Total	Rs.60,32,500	Rs.55,24,500/-	

16. Accordingly, the 1st respondent /injured claimant is entitled to a sum of **Rs.55,24,500/-** (Rupees Fifty Five Lakh Twenty Four Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation with proportionate costs. The appellant / Insurance Company is directed to deposit the entire award amount within a period of six weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being, made, the claimant is permitted to withdraw the modified award amount after filing necessary application before the Tribunal.



17. In the result, the Civil Miscellaneous Appeal is partly allowed modifying the award dated 14.03.2016 passed in M.C.O.P.No.66 of 2013 on the file of the Motor Accident Claims Tribunal, (Sub Court), Aruppukottai. Consequently, Cross Objection(MD) No.5 of 2017 is dismissed and connected miscellaneous petitions are also closed. No Cost.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(Sub Court), Aruppukottai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR No. 52628.

+1 CC to M/s.VEERA ASSOCIATES, Advocate, SR No. 52701

RM/TSG

PSM/MMS/SAR2/07.06.2017/9P/4C

Judgment in
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and
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