

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. Nos. 3168, 3169, 3170 of 2014

and 2309 and 2310 of 2016

& C.M.P. Nos.16269, 16270 of 2016,

11193 and 11194 of 2017

C.M.A. No. 3168 of 2014

E. Asha (minor) ..Appellant (Claimant)

Versus

1. K. Aruldos

(remained ex-parte before the Trial Court)

2. Royal Sundaram Alliance Insurance Co Ltd,

III floor, Subramanian Building,

No.1, Club House Road,

Chennai - 600 002

..Respondents (Respondent)

Prayer: Civil Miscellaneous Appeal as filed under section 173 of Motor Vehicle Act 1988, against the judgment and decree dated 21.03.2014 in M.C.O.P. No. 1742 of 2012 by the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant :: Mr.R. Kalai Arasan

For 1st Respondent :: Ex-parte

For 2nd respondent :: Ms.C. Harini for
Mr.N. Vijayaraghavan

C.M.A. No. 3169 of 2014

S.H. Seik Hussain

..Appellant/Respondent

Versus

1. K. Aruldos
(remained ex-parte before the Trial Court)

2. Royal Sundaram Alliance Insurance Co Ltd,
III floor, Subramanian Building,
No.1, Club House Road,
Chennai - 600 002 ..Respondents/Respondents

Prayer:Civil Miscellaneous Appeal as against the judgment and
decree dated 21.03.2014 in M.C.O.P. No. 1743 of 2012 by the
Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant :: Mr.R. Kalai Arasan
For 1st Respondent :: Ex-parte
For 2nd respondent :: Ms.C. Harini for
Mr.N. Vijayaraghavan

C.M.A. No. 3170 of 2014

S.H. Jesima Yasmin (Minor)
(declared as major as per the order
of this Court dated 23.6.2017 in
CMP No.20788 of2016) ..Appellant/claimant

Versus

1. K. Aruldos
(remained ex-parte before the Trial Court)
2. Royal Sundaram Alliance Insurance Co Ltd,
III floor, Subramanian Building,
No.1, Club House Road,
Chennai - 600 002 ..Respondents/Respondents

Prayer:Civil Miscellaneous Appeal as against the judgment and
decree dated 21.03.2014 in M.C.O.P. No. 1976 of 2012 by the
Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant :: Mr.R. Kalai Arasan
For 1st Respondent :: Ex-parte
For 2nd respondent :: Ms.C. Harini for
Mr.N. Vijayaraghavan

C.M.A. No. 2309 of 2016

Royal Sundaram Alliance Insurance Co Ltd,
III floor, Subramanian Building,
No.1, Club House Road,
Chennai - 600 002 ..Appellant (2nd Respondent)

Versus

1. S.H. Seik Hussain ..1st Respondent/Claimant
2. K. Aruldos ..Respondent/1st Respondent

Prayer:Civil Miscellaneous Appeal as against the judgment and decree dated 21.03.2014 in M.C.O.P. No. 1743 of 2012 by the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant :: Ms.C. Harini for
Mr.N. Vijayaraghavan

For 1st Respondent :: Mr.R. Kalai Arasan
For 2nd respondent :: Ex-parte

C.M.A. No. 2310 of 2016

Royal Sundaram Alliance Insurance Co Ltd,
III floor, Subramanian Building,
No.1, Club House Road,
Chennai - 600 002 ..Appellant(2nd Respondents)

Versis

1. Minor S.H. Jesima Yasmin .. 1st Respondent/claimant
(declared as major and discharge the guardianship
vide Order of the court dated 23/06/2017 in
CMP No.20788/2016)

2. K. Aruldos ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 21.03.2014 in M.C.O.P. No. 1976 of 2012 by the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant :: Ms.C. Harini for
Mr.N. Vijayaraghavan
For 1st Respondent :: Mr.R. Kalai Arasan
For 2nd respondent :: Ex-parte

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

C.M.A.Nos.3168, 3169 and 3170 of 2014 have been filed by the claimants seeking enhancement of quantum of compensation awarded by the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai in and by award dated 21.03.2014 in M.C.O.P.Nos.1742, 1743 and 1976 of 2012. Against the very same award, C.M.A.Nos.2309 and 2310 of 2016 have been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai in favour of the claimants in and by award dated 21.03.2014 in M.C.O.P.Nos.1743 and 1976 of 2012. As all these appeals arise out of the award dated 21.03.2014, they are disposed of by this common judgment.

2. Since the appeals have been filed challenging only the quantum of compensation awarded, it is not necessary for us to traverse into other aspects of the award.

3. The brief facts, which are necessary to decide the issues involved in these appeals, are as follows:

The injured victims in these appeals are father, his minor daughter and minor daughter's classmate respectively. The case of the claimants before the Tribunal was that on 01.03.2012 at about 8.20 hours when one of the claimants/injured victims viz., S.H. Seik Hussain was riding the two wheeler bearing Registration No.TN-22-AE-3411 from his residence to Tambaram on Valajabad-Vandalur Road having his minor daughter viz., S.H. Jesima Yasmin and her classmate E.Asha (minor), as pillionriders in the said Scooter was hit by a lorry, bearing Registration No.TN-22-BP-6103, insured with the Royal Sundaram Alliance Insurance Company Limited and thus caused the accident. In the said accident, all the three sustained grievous injuries. Hence three separate claims petitions have been filed by the claimants in M.C.O.P.No.1742, 1743 and 1976 of 2012 against the owner of the lorry bearing Registration No.TN-22-BP-6103 and the Insurer.

4. All the claims petitions were resisted by the Insurance Company, by taking a defence that at the time of accident, three persons had travelled in the motor cycle and as per Sec.128 of the Motor Vehicles Act, 1988, no driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle. In the instant case, two minor girls had travelled as pillion riders and hence there is contributory negligence on the part of the motorcyclist who had driven the motor cycle, viz., S.H. Seik Hussain, one of the claimants and thus the Insurance Company sought for

dismissal of the claims made.

5. In order to prove the claim on the side of the claimants, Mr.D. Elango, father of the injured victim viz., E. Asha was examined as P.W.1, father of the minor girl viz., Mr.Sheik Hussain was examined as P.W.2 and Dr.K.J. Mathiazhagan was examined as P.W.3 and Exs.P.1 to P.27 were marked. On behalf of the respondents in the claim petition, no one was examined and no document was marked.

6. The Tribunal, after analysing the oral and documentary evidence, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-22-BP-6103 and as such, held that the Insurance Company is liable to pay compensation and thus granted the award in all the claim petitions as follows:

M.C.O.P.No.1742/2012	:	Rs. 4,32,000/-
M.C.O.P.No.1743/2012	:	Rs.22,44,000/-
M.C.O.P.No.1976/2012	:	Rs.15,95,000/-

The Tribunal awarded the above amount together with interest at 7.5% per annum as compensation.

7. It is the submission of the learned counsel appearing for the Insurance Company that it is an admitted fact that at the time of accident totally three persons had travelled in the motor cycle bearing Registration No..TN-22-AE-3411 and the motor cycle was driven by one of the injured victims viz., S.H. Seik Hussain, having two minor girls as pillion riders, in violation of the Rules. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the injured victim viz., S.H. Seik Hussain, who had driven the two wheeler at the relevant point of time, but the Tribunal without going into the said defence raised by the Insurance Company had held that the accident was due to rash and negligent driving of the driver of the lorry bearing Registration No.TN-22-BP-6103 and hence the award amount needs to be reduced by fixing contributory negligence on the part of the rider of two wheeler.

8. Countering the submissions made by the learned counsel for the Insurance Company, the learned counsel appearing on behalf of the clalimants, submitted that though three claim petitions were filed and common award was passed, the Insurance Company has filed appeals only in respect of the Award passed in M.C.O.P.Nos.1743 and 1976 of 2012, which would show that the Insurance Company had accepted the findings rendered by the Tribunal in the other case. Therefore, the Insurance Company cannot canvass to set aside the findings rendered by the Tribunal wtih regard to the rash and negligence aspect in other

two cases.

9. With regard to the quantum of compensation, it is the submission of the learned counsel for the claimants that the amount awarded by the Tribunal in all the claim petitions are inadequate and therefore, it needs proper enhancement by way of re-assessment.

10. We have considered the rival submissions and have also gone through the entire materials on record.

11. With regard to the aspect of rash and negligent driving, it is the submission of the learned counsel for Insurance Company that at the time of accident, totally three persons had travelled in the two wheeler and therefore, by fixing contributory negligence on the part of the rider of the two wheeler, the amount awarded by the Tribunal has to be reduced.

12. We are unable to appreciate the submission made by the learned counsel for the Insurance Company. The police, on investigation, has filed

charge sheet only as against the driver of the insured vehicle. Moreover, on the side of the Insurance Company, no evidence was adduced to show that there was contributory negligence on the part of the rider of the two wheeler. Merely because three persons travelled in the two wheeler, it cannot be held that there was contributory negligence on the part of the motor cyclist in the absence of any evidence to show that the travelling of three persons is a cause for accident. Hence, we are not inclined to accept the submissions made by the learned counsel for the Insurance Company.

13. It is the specific submission of the claimants that though three claim petitions have been filed by the claimants, the Insurance Company has chosen to file appeals only against two awards and no appeal has been filed against the award passed in MCOP No.1742 of 2012. When the Insurance Company has accepted the findings rendered by the Tribunal in Award passed in M.C.O.P.No.1742 of 2012 by not filing an appeal as against the said Original Petition, now they cannot challenge the findings rendered by the Tribunal with regard to the aspect of the rash and negligence driving of the driver of the lorry in respect of other two connected claim petitions. We find some force in the submissions of the counsel for the claimants. Hence we are not inclined to interfere in the findings rendered by the Tribunal with regard to rash and negligence aspect.

14. With regard to the quantum of compensation, it would be appropriate to deal with each and every case in seriatum :

15. C.M.A.No.3168 of 2014:

With regard to quantum of compensation, it is the case of the claimant in M.C.O.P.No.1742 of 2012 (the appellant in CMA No.3168 of 2014) that as per Ex.P.3 Discharge Summary issued by Parvathy Hospital, on account of the accident, the minor victim sustained undisplaced fracture medial malleolus right ankle, degloving injury left ankle and was treated as inpatient from 01.03.2012 to 09.03.2012 during which period, wound debridement, VAC Application left foot was done on 01.03.2012, wound debridement VAC Removal and SSG Left foot was done on 06.03.2012 and thereafter, continued treatment as outpatient in the same hospital till 28.03.2012 as seen from Ex.P.6 Medical prescriptions and Ex.P.7 photograph shows the degloving injury sustained in left ankle. P.W.3 Dr.K.J. Mathiazhagan assessed the disability as 40%. The disability certificate issued by the doctor was marked as Ex.P.25.

Based on the nature of injury sustained, coupled with medical evidence, the Tribunal has awarded a sum of Rs.4,32,000/- and the break up details are as follows:

Transportation	: Rs. 10,000/-
Extra nourishment	: Rs. 10,000/-
Damage to clothes	: Rs. 1,000/-
Attender Charges	: Rs. 10,000/-
Medical expenses	: Rs.1,05,779/-
Future medical expenses	: Rs. 25,000/-
Loss of education	: Rs. 50,000/-
Pain and suffering	: Rs.1,00,000/-
Loss of Amenities	: Rs. 50,000/-
Disability of 35% at the rate of Rs.2000/-per percentage	Rs. 70,000/-
	Rs.4,31,779/-

and the same is rounded off to Rs.4,32,000/-.

16. Now, according to the learned counsel for the claimants, the award passed under the above heads are inadequate and needs enhancement, whereas, the learned counsel for the Insurance Company submitted that the amount awarded taking into account the nature of injuries sustained by the claimant appears to be on higher side and therefore, the same needs to be scaled down.

17. On perusal of the Award, we find that a sum of Rs.25,000/- awarded by the Tribunal under " future medical expenses" appears to be on the lower side. Hence the said amount is enhanced to Rs.75,000/- by adding a sum of Rs.50,000/-.Except this modification, the amount awarded by the Tribunal under other heads needs no interference and therefore it is hereby confirmed. Thus, the total amount of Rs.4,32,000/-, awarded by the Tribunal, is hereby enhanced to Rs.4,82,000/-.

18. C.M.A.No.3169 of 2014 and C.M.A.No.2309 of 2016:

C.M.A.No.3169 of 2014 is filed by one of the injured victims viz., S.H. Seik Hussain and C.M.A No.2309 of 2016 is filed by the Royal Sundaram Alliance Insurance Company Limited. It is the case of the claimant in M.C.O.P.No.1743/2012 (appellant in CMA No.3169 of 2014) that as per Ex.P.10, Discharge summary issued by Miot Hospital, the claimant sustained severe crush degloving injury with mangled right leg and was treated as inpatient in the hospital from 01.03.2012 to 13.03.2012 during which period, knee guillotine amputation right side was done on 01.03.2012, stump revision was done on 03.03.2012 and sploit skin grafting was done on 03.03.2012. Ex.P.15 is the photograph showing the amputation of right leg above knee. P.W.3 Dr.K.J. Mathiazhagan assessed the disability as 75%. The disability certificate issued by the doctor was marked as Ex.P.27. The Tribunal has awarded a sum of Rs.22,44,000/- and the break up details are as follows:

Loss of earning for 5 months	:	Rs. 37,500/-
Transportation	:	Rs. 50,000/-
Extra nourishment	:	Rs. 50,000/-
Damage to clothes	:	Rs. 1,000/-
Attender Charges	:	Rs.1,00,000/-
Medical expenses	:	Rs.2,40,223/-
Future medical expenses	:	Rs.1,00,000/-
Purchase of artificial limb	:	Rs.1,70,000/-
Future purchase of artificial limb:		Rs.1,00,000/-
Pain and suffering	:	Rs.1,50,000/-
Loss of Amenities	:	Rs.1,50,000/-
Permanent Disability	:	Rs.1,50,000/-
Loss of Earning Power	:	Rs.9,45,000/-
		Rs.22,43,723/-

the same is rounded off to Rs.22,44,000/-

19. According to the learned counsel appearing on behalf of the Insurance Company the amount awarded under each head appears to be on higher side and therefore, the same needs reduction.

20. We find that considering the nature of injury viz., amputation of right leg above knee, the period of treatment and the period of hospitalisation, the amount awarded by the Tribunal cannot be said to be on the higher side. However, we find that the Tribunal, after having awarded a sum of Rs.1,70,000/- for purchase of artificial limb, again awarded a sum of Rs.1,00,000/- towards future purchase of artificial limb. Therefore, the sum of Rs.1,00,000/- awarded under the head of "future purchase of artificial limb" is liable to be set aside and accordingly, the same is set aside. Consequently, the sum of RS.22,44,000/- awarded by the Tribunal is hereby reduced to Rs.21,44,000/-.

21. C.M.A.No.3170 of 2014 and C.M.A.No.2310 of 2016:

C.M.A.No.3170 of 2014 is filed by one of the injured victims viz., S.H. Jesima Yasmin and C.M.A No.2310 of 2016 is filed by the Royal Sundaram Alliance Insurance Company Limited.

22. It is the case of the claimant in M.C.O.P.No.1976/2012 (appellant in CMA No.3170 of 2014) that as per Ex.P.18, Discharge summary issued by Miot Hospital the claimant sustained major crush injury on right leg and foot and was treated as inpatient from 01.03.2012 to 13.03.2012, during which period, the right leg below knee was amputated on 01.03.2012, wound relook was done on 03.03.2012 and wound debridement and split skin grafting was done on 06.03.2012. Ex.P.23 is the photograph of the amputation of right leg below knee. P.W.3 Dr.K.J. Mathiazhagan assessed the disability as 60%. The disability certificate issued by the doctor was marked as Ex.P.26. The Tribunal has awarded a sum of Rs.15,95,000/- and the break up details are as follows:

Transportation(present and future) :	Rs.1,00,000/-
Extra nourishment :	Rs. 50,000/-
Damage to clothes :	Rs. 1,000/-
Attender Charges :	Rs. 50,000/-
Medical expenses :	Rs.1,24,310/-
Future medical expenses :	Rs.1,00,000/-
Purchase of artificial limb :	Rs. 45,000/-
Future purchase of artificial limb :	Rs.1,00,000/-
Loss of education :	Rs.1,00,000/-
Loss of marital prospects :	Rs.1,50,000/-
Pain and suffering :	Rs.1,50,000/-
Loss of Amenities :	Rs.1,50,000/-
Permanent Disability :	Rs.1,50,000/-
Loss of Earning Power :	Rs.3,24,000/-

Rs.15,94,310/-

the same is rounded off to Rs.15,95,000/-

23. According to the learned counsel appearing on behalf of the Insurance Company the amount awarded under each head appears to be on higher side and therefore, the same needs to be scaled down.

24. We find that considering the nature of injury viz., amputation of right leg above knee, the amount awarded by the Tribunal cannot be said to be on the higher side and absolutely we do not find any infirmity in the award passed by the Tribunal. However, we find that after having awarded a sum of Rs.45,000/- for purchase of artificial limb, the Tribunal once again awarded a sum of Rs.1,00,000/- towards future purchase of artificial limb. Therefore, the sum of Rs.1,00,000/- awarded under the head of "future purchase of artificial limb" is liable to be set aside and accordingly, the same is set aside. But, at the same time, we find that the Tribunal has awarded only a sum of Rs.1,50,000/- towards loss of marital prospects, which is inadequate and in our opinion the amount awarded thereof required to be enhanced taking note of the age of the claimant at the time of accident. Therefore we feel it is just and reasonable to add a sum of Rs.1,00,000/- towards that head. Therefore, the amount of Rs.1,50,000/- awarded towards loss of marital prospects is hereby enhanced to Rs.2,50,000/- and thus, the amount of Rs.15,95,000/-, awarded by the Tribunal is confirmed.

25. In the result,

(i) C..M.A.No.3168 of 2014 is partly allowed and the award of the Tribunal to the tune of Rs.4,32,000/- is hereby enhanced to Rs.4,82,000/- and the break up details of the same is as hereunder:

Transportation	:	Rs. 10,000/-
Extra nourishment	:	Rs. 10,000/-
Damage to clothes	:	Rs. 1,000/-
Attender Charges	:	Rs. 10,000/-
Medical expenses	:	Rs.1,05,779/-
Future medical expenses	:	Rs. 25,000/-
Loss of education	:	Rs. 50,000/-
Pain and suffering	:	Rs.1,00,000/-
Loss of Amenities	:	Rs. 50,000/-
Disability of 35% at the rate of Rs.2000/-per percentage		Rs. 70,000/-
Future attender and future extra nourishment charges		Rs. 50,000/-
		Rs.4,81,779/-

and the same is rounded off to Rs.4,82,000/- (Rupees four lakhs eighty two thousand only)

26. C.M.A.No.3169 of 2014, filed by one of the injured victims viz., S.H. Seik Hussain is dismissed and C.M.A.No.2309 of 2016, filed by the Insurance Company is partly allowed to the extent indicated above and the award of the Tribunal to the tune of Rs.22,44,000/- is hereby reduced to Rs.21,44,000/- and the break up details of the same is as hereunder:

Loss of earning for 5 months	:	Rs. 37,500/-
Transportation	:	Rs. 50,000/-
Extra nourishment	:	Rs. 50,000/-
Damage to clothes	:	Rs. 1,000/-
Attender Charges	:	Rs.1,00,000/-
Medical expenses	:	Rs.2,40,223/-
Future medical expenses	:	Rs.1,00,000/-
Purchase of artificial limb	:	Rs.1,70,000/-
Pain and suffering	:	Rs.1,50,000/-
Loss of Amenities	:	Rs.1,50,000/-
Permanent Disability	:	Rs.1,50,000/-
Loss of Earning Power	:	Rs.9,45,000/-
		Rs.21,43,723/-

the same is rounded off to Rs.21,44,000/-

27. C.M.A.No.3170 of 2014 filed by one of the injured victims viz., S.H. Jesima Yasmin and C.M.A.No.2310 of 2016 filed by the Insurance Company are dismissed and the award of the Tribunal to the tune of Rs.15,95,000/- is hereby confirmed by setting aside the sum of Rs.1,00,000/- awarded under the head of "future purchase of artificial limb" -and instead, the amount of Rs.1,50,000/-awarded towards loss of marital prospects is hereby enhanced to Rs.2,50,000/- and thus, the amount of Rs.15,95,000/-, awarded by the Tribunal is confirmed and the break up details of the same is as hereunder:

Transportation(present and future)	:	Rs.1,00,000/-
Extra nourishment	:	Rs. 50,000/-
Damage to clothes	:	Rs. 1,000/-
Attender Charges	:	Rs. 50,000/-
Medical expenses	:	Rs.1,24,310/-
Future medical expenses	:	Rs.1,00,000/-
Purchase of artificial limb	:	Rs. 45,000/-
Loss of education	:	Rs.1,00,000/-
Loss of marital prospects (2,50,000/- + 1,00,000/-)	:	Rs.2,50,000/-
Pain and suffering	:	Rs.1,50,000/-
Loss of Amenities	:	Rs.1,50,000/-

Permanent Disability : Rs.1,50,000/-
Loss of Earning Power : Rs.3,24,000/-

Rs.15,94,310/-

the same is rounded off to Rs.15,95,000/-

28. The Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest at 7.5% p.a before the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit or if the amount is already lying in deposit, the claimants are permitted to withdraw the same with accrued interest. No costs. Connected M.Ps. are closed.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

SR. No.

To

The Small Causes court,
Motor Accidents Claims Tribunal, Chennai.

COPT TO

The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+2cc to Mr.N.M.MUTHURAJAN, Advocate, S.R.No. 19056

+2cc to Mr.N.VIJAYARAGHAVAN, Advocate, S.R.No. 19750 &
19751

C.M.A. Nos. 3168, 3169, 3170 of 2014

and 2309 and 2310 of 2016

SV(CO)
TR(19/04/2018)

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