IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2019

Pronounced on : 29.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.554, 321, 3608 of 2011
and
CMA.No.555 of 2011 and Cross.Obj.No.37 of 2019
and
MP.Nos.1 of 2011 (4 cases)

Divisional Manager,
National Insurance Co. Ltd.,
Vellore. ... Appellant
(in all C.M.A's)

Versus

1.E.Santhanakrishnan
2.R.Sathasivam
3.Venkataramana
4.Managing Director,
Royal Sundaram Alliance Insurance Co.,,
Chennai-14. ... Respondents

[R2 remained ex-parte before the Tribunal and notice dispensed with]

(in CMA.No.554 of 2011)

and

1.J.Balaraman (died)
2.R.Sathasivam
3.Venkataramana
4.Managing Director
Royal Sundaram Alliance Insurance Co.,,
Chennai-14.

[R2 remained ex-parte before the Tribunal and notice dispensed with]

5.Hemamalini
6.Balasaran
7.Neelavathi ... Respondents

[R5 to R7 are impleaded as the LR's of the deceased R1/Balaraman, as per
memo dated 13.03.2019]

(in C.M.A.No.321 of 2011)

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and

1.Selvakumar
2.R.Sathasivam
3.Venkataramana
4.Managing Director
Royal Sundaram Alliance Insurance Co.,,
Chennai-14.

... Respondents

[R2 remained ex-parte before the Tribunal and notice dispensed with]

(in C.M.A.No.3608 of 2011)

and

1.Venkataramana
2.R.Sathasivam ... Respondents

(in C.M.A.No.555 of 2011)

and

Cross.Obj.No.37 of 2019:

Venkataramana ... Cross appellant

Versus

1.The Divisional Manager,
National Insurance Co.Ltd.,
Vellore.

2.R.Sathasivam ... Respondents

Common Prayer for CMA.Nos.554, 321, 3608 & 555 of 2011:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgments and decrees made in M.C.O.P.Nos.258 & 260 of 2006, MCOP.No.259 of 2006 and MCOP.No.9 of 2007 dated 23.03.2010, dated 24.03.2010 and dated 13.07.2010 respectively, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar.

Prayer for Cross Objection No.37 of 2019:

Cross Obj. is filed under Order XLI Rule 22 of CPC, as against the Judgment and decree passed in M.C.O.P.Nos.259 of 2006, dated 23.03.2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar.

Mr.M.Krishnamoorthy: For Appellant (in all CMA's) & for R1 (in Cross.Obj..37 of 2019)
Mr.K.G.Senthilkumar: For R1 (in CMA's.554, 321 & 3608/2011)

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Mr.S.Manohar : For R4
(in CMA's.554,321 & 3608/2011)

Mrs.Sudharshanasundar: For R1 (in CMA.555/2011) &
and for Cross Obj.
(in Cross.Obj.No.37 of 2019)
: Ex-parte - R2
(in all cases)

COMMON JUDGMENT

All these appeals are filed by the Insurance company challenging the Judgments and decrees (i) dated 23.03.2010 in M.C.O.P.Nos.258 & 260 of 2006, (ii) dated 24.03.2010 in MCOP.No.259 of 2006 and dated 13.07.2010 in MCOP.No.9 of 2007, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar, Tiruvannamalai.

2.As against the judgment and decree dated 24.03.2010 passed in MCOP.No.259 of 2006, the claimant has filed the Cross Objection No.37 of 2019, seeking enhancement of the compensation awarded by the Tribunal.

3.I have heard on the point of liability and quantum of compensation and perused the records.

4.All the claimants are claim petitioners before the Tribunal. The driver, owner and the persons, who travelled in the Maruthi Omni Van bearing Registration No.TN-27-Q-1324 have filed the above said MCOP's for the accidental injuries.

5.Common pleadings are to the effect that while the claimants were travelling in a Mini Van, the driver of the van, hit against a Bullock cart and thereafter dashed against the Lorry bearing Registration No.TN-27-Q-9747, which was owned by the first respondent, insured with the second respondent/insurance company (before the Tribunal), thereby the accident occurred on 08.07.2005. Hence, the claimants sought compensation therefor.

6.Even though the owner of the omni van and the insurance company of the omni van were arrayed as respondents 3 and 4, all the claim petitioners have specifically pleaded before the Tribunal that they were arrayed only as a formal party and the claimants are not seeking any compensation from them. Accordingly, it appears that the Tribunal dismissed the MCOP's as against respondents 3 and 4 and concluded that the

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compensation has to be paid by the owner of the lorry, which was involved in the accident and its insurance company/the appellant herein.

7.It is to be stated that in MCOP.No.9 of 2007 in CMA.No.321 of 2011 and the other MCOP.Nos.258, 260 and 259 of 2006 in CMA. Nos.554, 3608 & 555 of 2011 separate witnesses were examined and separate judgment have been passed. In support of the claim petition in MCOP.No.9 of 2007 separate trial was conducted by the different Judicial Officer and the Judgment was rendered on 13.07.2010. The Tribunal held that due to the fact that the driver of the omni van had lost the opportunity to avoid the accident, both the driver of the omni van and the tanker lorry had contributed to the accident and fixed the contributory negligence at 65 :35 and awarded a sum of Rs.78,225/- as compensation.

8.In MCOP.Nos.258, 259 and 260 of 2006, the contributory negligence was fixed as 50% : 50%. Accordingly, the Tribunal awarded the compensation amounts in MCOP.Nos.258, 260 & 259 of 2006, to the tune of Rs.3,38,350/-, Rs.44,005/- & Rs.3,46,850/- respectively.

9.There was no prayer made in the claim petitions as against the owner of the van and the insurance company of the van, accordingly, the Tribunal passed an award only to the extent of liability as against the owner of the Lorry and its insurance company alone.

10.Learned counsel for the appellant/insurance company would contend that in respect of the very same accident, simultaneous trial was conducted and separate judgments were delivered on 13.07.2010, 23.03.2010 and on 24.03.2010 in all MCOP's. The Tribunal held that the contributory negligence of the respective drivers at 50:50 and 65:35 in respective MCOP's as stated supra. Hence, he contended that contributory negligence has to be re-assessed, in view of the different findings rendered by the Tribunal in respect of the very same accident. He contended that the quantum of compensation in the above said cases is on the higher side.

11.The claimant in MCOP.No.259 of 2006 in CMA.No.555 of 2011 has filed Cross Objection No.37 of 2019, seeking enhancement of compensation amount awarded by the Tribunal in his favour. According to the claimant, the Tribunal failed to note the nature of injury sustained by him in the accident, period of hospitalisation and also income of the claimant and, therefore, seeks for enhancement.

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12.Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

13.After going through the evidence of the injured claimants, who were examined as PW.1 in the respective MCOP's, coupled with the documentary evidence of Ex.P1 it is elicited that the claimants were travelling in the van and proceeding on the road, following a water tanker lorry, which is going behind a bullock cart. At the time, the van overtook the water tanker lorry and during the course, it dashed against the bullock cart, proceeding in its front, and thereby swayed and dashed against the lorry coming from the opposite direction by crossing the middle of the road. The driver of the omni van, in which, the claimants/petitioners have been travelling at that time, had lost the opportunity to avoid the accident. Hence, I find that the contributory negligence fixed on the part of the driver of the van at 65% to that of the driver of the lorry coming in the opposite direction at 35% is just and reasonable, in as much as, the accident has taken place over the middle of the road, and both the vehicles are coming in the opposite direction, and it was the Maruthi omini van, which was trying to overtake the water tanker lorry and dashed against the bullock cart and the lorry, as stated supra.

14.This Court is of the considered view that the contributory negligence of the respective drivers at 65% to the van and 35% to the lorry assigned in MCOP.No.9 of 2007, appears to be just and reasonable. But the contra finding arrived at by the Tribunal, while passing the Judgments in other MCOP.Nos.258, 259 and 260 of 2006 shall stand vacated and the same is modified to the above limited extent in all the MCOP's and all CMA's are allowed in part.

15.I heard on the point of quantum of compensation and perused the records.

16.In CMA.No.554 of 2011, arising out of MCOP.No.258 of 2006 the factum of the decision in the preceding paragraphs regarding the contributory negligence at 65% : 35%, the appellant/insurance company, it is seen that the insurance company of the lorry is liable to pay compensation only to the extent of 35% and to that of extent this CMA.No.554 of 2011 is allowed in part.

17.On the point of quantum of compensation in CMA.No.554 of 2011, I perused the evidence of PW.2/Dr. Balakrishnan and taking into consideration, the discharge summaries marked under Exs.P3 to P8 and the disability certificate issued under Ex.P24 coupled with the wound certificate under Ex.P9, issued by the MIOT

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hospital, the claimant suffered disability at 58.6% and there was a mal-union on the left leg bone and mal-union on left knee, whereby the compensation was fixed for the disability at 27% and a sum of Rs.1,71,000/- was granted and the other heads awarded by the Tribunal also appears to be reasonable. Hence, on the point of quantum of compensation and taking into consideration, the nature of the injuries and multiple surgeries underwent by the claimant and that both the knee bones are broken and subsequently, the claimant underwent surgery, for such fracture, and that the claimant also suffered fracture on both the thigh bone and he underwent surgery for the same and he stayed many number of days in the hospital, the Tribunal awarded a sum of Rs.3,38,350/- as compensation to the claimant in this appeal and the award of compensation is hereby confirmed. Accordingly, the CMA.No.554 of 2011 filed by the insurance company is allowed to the extent of liability being reduced to 35% from 50%, and the quantum arrived by the Tribunal is hereby confirmed.

18.Though the other five MCOP's have been filed, arising out of the very same accident and the simultaneous trial was conducted and separate judgments was rendered in the three cases and for balance of two cases the judgment was rendered on different day.

19.CMA.321 of 2011, is filed as against MCOP No. 9 of 2007, I have heard both sides, on the point of quantum of compensation at and perused the records.

20.Taking note of the Accident Register and after examining the injured claimant's discharge summary, issued by PW.2/Dr.Balakrishnan, MIOT hospital, who assessed the claimant's disability at 41% under Ex.P16/disability certificate and stated that the claimant suffered fracture on left thigh and hip bones, for which, he took 16 days treatment as in-patient and there was a mal-union on thigh bone, thereby plates and screws were implanted, therefore, he could not walk and sit as before and the disability was fixed at 41%. This Court is of the considered view that the Tribunal properly assessed the disability of the claimant and taking into consideration, date of the accident a sum of Rs.1,500/- was fixed per percentage of disability, and granted a sum of Rs.61,500/- towards disability and the same is hereby confirmed.

21.Though the medical bills have not shown the correct details of the medical expenses incurred by the claimant and the discrepancy was found in that bills, the Tribunal, based upon Ex.P4/medical bill awarded a consoldiated amount of Rs.1,25,000/-, which is just and proper and the same is hereby confirmed. However, this Court feels it just and proper to enchance the sum of Rs.5,000/- to Rs.6,000/- under the head of

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extra-nourishment. Further, the Tribunal failed to award amount under the head of Attender charges, hence, this Court awards a sum of Rs.6,000/- towards Attender charges. Considering the period of hospitalization, the Tribunal awarded a sum of Rs.3,000/- for transport charges. The same is meagre. Hence, this Court enhances the same to Rs.8,000/- towards transport charges. The Tribunal did not award any amount towards loss of amenities, hence, this Court awards a sum of Rs.6,000/- to the said head. In respect of pain and suffering the sum of Rs.25,000/- is reduced to a sum of Rs.10,000/-. Apart from that a sum of Rs.6,000/- is awarded for pecuniary loss during the period of treatment under the head loss of income during the period of treatment. All these amounts are directed to be deposited by the appellant/insurance company at 35% to the above said amounts mentioned in this appeal. Accordingly, the CMA.No.321 of 2011 is partly allowed to the extent of 35% as indicated above. The break-up details of the award amounts are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.61,500/-	Rs.61,500/-
Medical Expenses	Rs.1,25,000/-	Rs.1,25,000/-
Pain and suffering	Rs.25,000/-	Rs.10,000/-
Loss of income during the period of treatment	Rs.4,000/-	Rs.6,000/-
Extra nourishment	Rs.5000/-	Rs.6,000/-
Transportation	Rs.3,000/-	Rs.8,000/-
Attendant charges	-	Rs.6,000/-
Loss of amenities	-	Rs.6,000/-
Total	Rs.2,23,500/- (35% was granted i.e.,Rs.78,225/-)	Rs.2,28,500/-

22.In CMA.No.555 of 2011 filed by the insurance company against the award passed in MCOP.No.259 of 2006, the claimants one of the persons, who travelled in the Maruthi omini van. For the reasons assigned in the preceding paragraphs, this Court holds that the accident had taken place due to the rash and negligent driving on the part of both the drivers. Accordingly, the contributory negligence on each of the drivers is fixed at 65% : 35% and the finding rendered by the Tribunal fixing contributory negligence, in the above said MCOP at 50% : 50% on the part of both vehicles is hereby vacated and the same is hereby modified as 65% to the van and 35% to the lorry.

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23.On the point of quantum of compensation, I have heard both sides as well as the cross objector.

24.It is to be stated that PW.2/Dr.Balakrishnan, in Government Hospital, Cheyyar, MIOT Hospital and Vijaya Health Centre, based upon the evidence of Exs.P3 to P6/discharge summaries coupled with Ex.P21/x-ray, had issued the disabilities on split up basis that is 41.6% assessed due to the fracture on left thigh bone and 36.6% assessed due to the fracture on left shoulder and left hand elbow and 38% assessed due to the fracture on right knee fracture. Accordingly, the total disability certificate was issued under Ex.P20. Taking into consideration, the nature of the injuries as deposed by PW.2/Doctor coupled with the five discharge summaries/Exs.P3 to P6, due to the injuries and the subsequent surgeries undergone by the claimant at MIOT hospital and Vijaya Health Centre, this Court is of the considered view that the whole body disability may be fixed at 30% and the disability is now fixed at 40% for the whole body.

25.Having regard to the nature of injuries sustained by the claimant, he lost his earning capacity and also it affected his avocation and he could not perform his regular work, as before. This Court is of the opinion that the claimant's disability is functional disability to the extent of 40% and the criteria laid down by the Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another, reported in 2010 (2) TN MAC 581 SC is satisfied in this case.

26.As per Ex.P1/FIR, the claimant's age was 45 years at the time of accident, 25% of future prospects and multiplier '14' is adopted as per the oft-quoted Judgments rendered by the Hon'ble Supreme Court cases in Sarla Verma & Others Vs. Delhi Transport Corporation & another reported in 2009 (2) TN MAC 1 (SC) and (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12. The notional income of the claimant is fixed at Rs.4,000/-. Due to the surgeries and considering the extent of treatment that he underwent treatment, he could not have been in a position to attend his work from the date of the accident for 9 months, accordingly loss of income during the period of treatment is arrived at Rs.36,000/- (Rs.4,000/- x 9). Thus, his notional income is arrived at Rs.5,000/- (Rs.4,000 x 25% = Rs.1,000 + Rs.4,000). Accordingly, the compensation of Rs.3,36,000/-(Rs.5,000/- x 12 x 14 x 40/100) towards disability would meet the ends of justice. Apart from that, the medical bills marked under Exs.P7 & P19 show that the claimant spent a huge sum of Rs.2,39,761/- and a sum of Rs.1,73,939/- in toto a sum of Rs.4,13,700/- for medical expenses and the same was, in my considered view, rightly allowed by the Tribunal.

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27.Taking into consideration, the fact that the claimant/cross objector had taken treatment from 09.07.2005 to 11.08.2005; 27.09.2005 to 03.10.2005; 28.11.2005 to 30.11.2005 and that thereafter, he was admitted for surgery as an in-patient from 04.04.2007 and discharged on 12.04.2007, it is apparent that totally he spent more than 50 days in hospital. Hence, this Court feels it is just and reasonable to enhance the Attender charges from Rs.5,000/- to Rs.10,000/- and the amount awarded under other heads viz., a sum of Rs.30,000/- towards pain and suffering; a sum of Rs.10,000/- towards transportation and a sum of Rs.3,000/- towards extra-nourishment by the Tribunal are hereby confirmed. Considering the nature of the injuries sustained by the claimant, the Tribunal awarded a sum of Rs.2,32,000/- towards disability. At the same time, the Tribunal ought to have award some amount towards loss of amenities, hence, this Court awards a sum of Rs.5,000/- towards loss of amenities. The enhanced award amount is directed to be deposited by the insurance company to the extent of 35% of compensation to the claimant. In the absence of the owner of the van, the cross objector/claimant is entitled to 35% of compensation, as indicated above. The break-up details of the compensation award amount is as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.2,32,000/-	Rs.2,32,000/-
Medical Expenses	Rs.4,13,700/-	Rs.4,13,700/-
Pain and suffering	Rs.30,000/-	Rs.30,000/-
Extra nourishment	Rs.3,000/-	Rs.3,000/-
Transportation	Rs.10,000/-	Rs.10,000/-
Attendent charges	Rs.5,000/-	Rs.10,000/-
Loss of amenities	-	Rs.5,000/-
Total	Rs.6,93,700/- (50% was granted i.e., Rs.3,46,850/-)	Rs.7,03,700/-

28.In MCOP.No.260 of 2006, corresponding to CMA.No.3608 of 2011, in view of the finding in the preceding paragraphs, the contributory negligence on the part of the driver of the van and

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driver of the lorry is modified as 65% : 35% by modifying the award of the Tribunal fixing contributory negligence at 50% : 50%.

29.On the point of compensation, I have heard both sides and perused the records.

30.PW.2/Dr.Balakrishnan, deposed that due to the accidental injuries, the claimant sustained mal-union fracture on left heel, and after the accident and treatment, the motion of the left leg was reduced and it is difficult for him to sit on the floor and walk long distance, hence, the disability was fixed at 24% and by fixing a sum of Rs.1,500/- per percentage of disability, a sum of Rs.36,000/- was granted towards disability. The Tribunal awarded a sum of Rs.20,000/- towards pain and suffering is appears to be reasonable and a sum of Rs.4,000/- awarded by the Tribunal for transportation is enhanced to Rs.5,000/- and a sum of Rs.2,000/- awarded by the Tribunal for Attendent charges is enchanced to Rs.5,000/-. Considering the medical bill a sum of Rs.26,010/- incurred by the claimant is also hereby confirmed. In my considered view, the amounts awarded are reasonable and the same are not disturbed. The Tribunal failed to award amount under the heads of loss of amenities and extra-nourishment. Hence, this Court awards a sum of Rs.5,000/- and a sum of Rs.7,000/- towards the above said heads. All these amounts shall directed to be deposited by the insurance company on behalf of the owner of the lorry to the extent of 35% as indicated above. Accordingly the CMA.No.3608 of 2011 is partly allowed. Accordingly, the compensation amount awarded by the Tribunal is enhanced as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.36,000/-	Rs.36,000/-
Medical Expenses	Rs.26,010/-	Rs.26,010/-
Pain and suffering	Rs.20,000/-	Rs.20,000/-
Extra nourishment	-	Rs.7,000/-
Transportation	Rs.4,000/-	Rs.5,000/-
Attendant charges	Rs.2,000/-	Rs.5,000/-
Loss of amenities	-	Rs.5,000/-
Total	Rs.88,010/- (50% was granted i.e., Rs.44,005/-)	Rs.1,04,010/-

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31.In the result, CMA.Nos.554, 321, 3608 and 555 of 2011 by the insurance company are partly allowed to the limited extent of fixing the liability on the appellant insurance company at 35% and the balance 65% has to be borne by the insurance company of the Van, one of the respondents in these appeals.

(i) In CMA.No.321 of 2011, the memo dated 13.03.2019 is recorded and the compensation award amount in respect of the first respondent shall be given to his legal heirs namely respondents 5 to 7 in equal proportionate.

(ii) Similarly, the Cross Objection filed by the claimant in CMA.No.555 of 2011 is allowed to the limited extent, as indicated above.

(iii) The appellant insurance company as well as the Royal Sundaram Alliance Insurance Company Limited, one of the respondents in these Civil Miscellaneous Appeals, are directed to deposit the enhanced compensation amount, as determined in these appeals to the credit of the respective Claim Petitions along with interest at 7.5% and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iv) On such deposit being made, the respective claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn.

(v) The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Subordinate Court, Cheyyar.

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2. The Section Officer,
V.R. Section, High Court,
Madras - 104.

C.M.A.Nos.554, 321, 3608 of 2011
and
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