

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.784 and 785 of 2011 &
Cros.Obj.Nos.124 and 125 of 2011

C.M.A.Nos.784 and 785 of 2011

Royal Sundaram Alliance Insurance Co. Ltd.,
No.45 & 46, Whites Road,
Chennai - 600 014.

...Appellant
in both C.M.As/2nd Respondent

vs.

1.B.Narayanan ... 1st Respondent in
C.M.A.No.784 of 2011/Petitioner

1.R.Prathiba Narayanan ... 1st Respondent in
C.M.A.No.785 of 2011/Petitioner

2.G.Shanmuganathan ... 2nd Respondent
in both C.M.As /1st Respondent
(2nd Respondent Exparte in Lower
Court Hence notice may be dispense with)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section
173 of the Motor Vehicles Act, 1988 against the decree and
Judgment dated 28.10.2010 passed in MCOP.Nos.950 and 951 of
2009, on the file of the Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.2, Poonamallee.

In both C.M.As:

Appellant : Mr.N.Vijayaraghavan

R1 : Mr.K.Varadhakamaraj

R2 : Mr.Y.Bhuvaneshkumar

Cros.Obj.Nos.124 and 125 of 2011

1.B.Narayanan ... Cross Objector/1st Respondent
in Cros.Obj.Nos.124 of 2011/1st
Respondent/Petitioner

1.R.Prathiba Narayanan ... Cross Objector
in Cros.Obj.Nos.125 of 2011

vs.

1.Royal Sundaram Alliance Insurance Co. Ltd.,
No.45 & 46, Whites Road,
Chennai - 600 014. 1st Respondent/Appellant/2nd Respondent

2. G.Shanmuganathan ...2nd Respondents in
both Cross. Objections/
2nd Respondent/1st Respondent

COMMON PRAYER: Cross Objections filed under Order 41 Rule 22 of the Code of Civil Procedure, against the decree and Judgment dated 28.10.2010 passed in MCOP.Nos.950 and 951 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Poonamallee.

In both Cross Objections :

Cross Objector : Mr.K.Varadhakamaraj

R1 : Mr.N.Vijayaraghavan

R2 : Mr.Y.Bhuvaneshkumar

J U D G M E N T

The appellant, Royal Sundaram Alliance Insurance Company Limited is the second respondent in MCOP.Nos.950 and 951 of 2009, on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.2, Poonamallee. The claimants filed the claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident on 07.06.2009.

2. For the sake of convenience, Mr.B.Narayanan, the claimant in MCOP.No.950 of 2009 is referred to as first claimant and Miss.R.Prathiba Narayanan, the claimant in MCOP.No.951 of 2009 is referred to as second claimant.

3. The case of the claimants is that on 07.06.2009, the first claimant was riding his two wheeler bearing Registration No. TN 02 AH 0272 with the second claimant (his daughter) as a pillion rider and they were proceeding towards Meenambakkam along G.S.T. Road and at about 01.30 p.m, a speeding Toyota

Innova Car bearing Registration No. TN 58 R 7728, which was proceeding ahead of them suddenly stopped, as a result whereof, the claimants hit the Toyota Innova Car and fell down from the motorcycle and sustained grievous injuries.

4. According to the claimants, the rash and negligent driving of the driver of the Toyota Innova Car was the cause of the accident and that since the said Car was insured with the Royal Sundaram Alliance Insurance Company, the owner and the insurer of the Toyota Innova Car are jointly and severally liable to pay compensation.

5. The owner of the Car remained absent before the Tribunal and therefore, he was set ex-parte. The Royal Sundaram Alliance Insurance Company contested the claim petitions on all the grounds available to the insured. The learned Additional District Judge / Motor Accident Claims Tribunal, Fast Track Court No.2, Poonamallee after analysing the evidence on record, awarded compensation of Rs.5,76,310/- and Rs.1,75,825/- to the claimants 1 and 2 respectively together with interest at the rate of 7.5% per annum. The Tribunal also concluded that the driver of the Toyota Innova Car was rash and negligent and directed the owner and the insurer of the Car to pay the compensation jointly and severally. Aggrieved over the orders passed by the Tribunal, the Royal Sundaram Alliance Insurance Company filed the present appeals, and the claimants filed Cross Objections 124 of 2011 and 125 of 2011 seeking for enhancement of compensation.

6. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant, Mr.K.Varadhakamaraj, learned counsel appearing for the first respondent and Mr.Y.Bhuvaneshkumar, learned counsel appearing for the second respondent.

7. A perusal of the orders passed by the Tribunal shows that the Tribunal fixed the negligence on the part of the driver of the Toyota Innova Car mainly on the following grounds :

- I. Though the First Information Report was registered by the police against the rider of the two wheeler, no final report was filed by the concerned police.
- II. The Insurance Company did not examine the driver of the Toyota Innova Car to prove their contention that the rider of the two wheeler alone is responsible for the accident.

The observations of the Tribunal cannot be found fault with, in the light of the fact that the claimants have categorically deposed that the driver of the Toyota Innova Car, suddenly stopped the vehicle on the middle of the road, as a result of which, they hit the Toyota Innova Car. There is no good ground

to disbelieve their versions. In the facts and circumstances, the finding of the Tribunal that the driver of the Toyota Innova Car was rash and negligent is perfectly in order.

8. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant relied on the decision in Chola mandalam MS General Insurance Company Limited vs. Sivasankaran and another in C.M.A.No.113 of 2018 dated 20.08.2018, wherein, it has been held thus :

"A perusal of the records would show that the claimant on account of the accident lost his right leg above the knee as per the deposition of the doctor-P.W.2 and further fortified by Exs.P9 - discharge summary and Ex.P17 - disability certificate. However, the Tribunal, taking the monthly income of the victim at Rs.30,000/- and adopting the multiplier of '13' for 80% disability, determined the loss of future income at Rs.37,14,000/-. Whereas, in the present case, the victim himself has admitted that he did not lose his job, but his contention is that the prospects of promotion have been affected and the benefit of incentive bonus got reduced. Even a perusal of Exs.P7, P8 & P10 would prove that the incentive bonus received by the claimant got reduced to Rs.3,57,832/- from Rs.15,55,849/-, which he received prior to the accident. Taking advantage of the said fact, the claimant cannot contend that he is entitled to receive a sum of Rs.37,44,000/- towards the loss of future income. Assuming for the moment, the rights of the victim are violated by the insurance company or any incentive is not being given on account of his disability, the rights of the victim is always protected by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. When the said statute safeguards the first respondent / claimant's interest and there is no loss of job, we are of the opinion that the award of Rs.37,44,000/- towards loss of future income by the Tribunal is unwarranted and the same needs to be interfered with."

He therefore prayed for scaling down the compensation.

9. C.M.A.No.784 of 2011: A perusal of the discharge summary (Ex.P2) shows the first claimant had sustained the following injuries:

- (i) Grade I Compound Shattered Supracondylar fracture with intercondylar fracture left femur,
- (ii) head injury,
- (iii) left heel pad avulsion and
- (iv) undisplaced fracture left medial malleolus.

Dr.Saichandran (PW3) has assessed the partial permanent disability as 65% and the Tribunal has reduced the same to 55% and awarded a sum of Rs.2,000/- per percentage of disability. Considering the nature of injuries sustained by him, the partial permanent disability is fixed as 60% and a sum of Rs.2,000/- per percentage of disability is awarded. In the claim petition, it is contended that he is working a General Manager in a private concern, earning a sum of Rs.12,00,000/- per annum. No income proof was adduced by him. Therefore, the notional monthly income is fixed as Rs.6,000/-. The first claimant had sustained multiple fractures as stated above and so he would not have been in a position to attend to his regular work atleast for 60 months and a sum of Rs.3,60,000/- (Rs.6,000/- x 60 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.1,20,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.15,000/-
4.	Extra nourishment	Rs.15,000/-
5.	Attender's charges	Rs.20,000/-
6.	Loss of income	Rs.3,60,000/-
7.	Medical Expenses	Rs.3,96,310/-
8.	Loss of amenities	Rs.25,000/-
Total		Rs.9,76,310/-

10. C.M.A.No.785 of 2011: A perusal of the discharge summary (Ex.P11) shows that the second claimant has sustained "comminuted fracture middle third left femur". Dr.Saichandran (PW3) has assessed the partial permanent disability as 40% and the Tribunal has reduced the same to 30% and awarded a sum of Rs.1,000/- per percentage of disability. Considering the nature of injuries sustained by her, the partial permanent disability is fixed as 40% as assessed by Dr.Saichandran (PW3) and a sum of Rs.2,000/- per percentage of disability is awarded, since the accident took place in the year 2009. The award passed by this

Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.80,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.15,000/-
4.	Extra nourishment	Rs.15,000/-
5.	Attender's charges	Rs.20,000/-
6.	Medical Expenses	Rs.1,15,825/-
7.	Loss of amenities	Rs.25,000/-
Total		Rs.2,95,825/-

11. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. The Cross Objections are partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal in MCOP.No.950 of 2009 is enhanced from Rs.5,76,310/- to Rs.9,76,310/-.

(iii) The quantum of compensation awarded by the Tribunal in MCOP.No.951 of 2009 is enhanced from Rs.1,75,825/- to Rs.2,95,825/-.

(iv) The claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(v) The Royal Sundaram Alliance Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.9,76,310/- and Rs.2,95,825/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.Nos.950 and 951 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Poonamallee within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimants (in both MCOPs) are at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
The Additional District Judge,
Fast Track Court No.2,
Poonamallee.

2.The Section Officer,
VR Section,
High Court of Madras.

+2cc to Mr.N.Vijayaraghavan, Advocate Sr.98180, 98181

+2cc to Mr.K.Varadha Kamaraj, Advocate Sr.96834, 96835

CMA.Nos.784 and 785 of 2011 &
Cros.Obj.Nos.124 and 125 of 2011

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srg 20/11/2020

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