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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM

HONOURABLE MR. JUSTICE R.SUBBIAH
AND
HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.169 of 2018 & 3393 of 2019
and
CMP.No.2068 of 2018

Sundaram (died)

1. Tmt.Mekala
W/o. Sundaram

2. Tmt.Sudha
D/o. Sundaram

3. S.Kumaresan
S/o. Sundaram

...Appellants/Petitioners in
CMA.No.3393/2019

1. Royal Sundaram Aliance Insurance
Co., Ltd.,

2nd Floor, No.3, Kadar Nawaskhan Road,
Nungambakkam, Chennai - 6.

...Appellant/Second Respondent
in CMA.No.169/2018

Vs.

1. Ayyandurai
S/o. Ayyannan

2. Royal Sundaram Aliance Insurance
Co., Ltd.,

2nd Floor, No.3, Kadar Nawaskhan Road,
Nungambakkam, Chennai - 6.

..Respondents/Respondents in
CMA.No.3393/2019

1. Sundaram (died)

2. Ayyandhurai
S/o. Ayyannan

3. Tmt.Mekala
W/o. Sundaram

4. Tmt.Sudha
D/o. Sundaram



5. S.Kumaresan
S/o. Sundaram

(RR3 to 5 brought on record of the
Lrs of the deceased R1 viz., Sundaram
vide Court Order dated 04.02.2021 made in
CMP.Nos.1634, 1636 & 1637/2021
in CMA.169/2018)

..Respondents/Petitioners in
CMA.No.169/2018

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 09.10.2017 in M.C.O.P.No.203 of 2013 on the
file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellant in
CMA.No.3393/2019 ::Mr.Thangaraju C

For Appellant in
CMA.No.169/2018 ::Mr.G.Vasudevan

For Respondents in
CMA.No.3393/2019 ::Ex-Parte - R1
Mr.G.Vasudevan for R2

For Respondents in
CMA.No.169/2018 ::Mr.Thangaraju C for
R3 to R5

COMMON JUDGMENT

(Common Judgment of the Court was delivered by SATHI KUMAR
SUKUMARA KURUP,J.)

These Civil Miscellaneous Appeals have been filed against
the Judgment and Decree dated 09.10.2017 made in M.C.O.P.No.203
of 2013 on the file of the Motor Accident Claims Tribunal, Sub
Court, Rasipuram.

2. CMA.No.169 of 2018 filed by Royal Sundaram Alliance
Insurance Company seeking to set aside the award passed by the
Motor Accident Claims Tribunal, Rasipuram. CMA. No. 3393 of
2019 was filed by the legal heirs of the Claimant/Sundaram
seeking enhancement of the award passed by the Tribunal.

3. When CMA. No.169 of 2018 filed by the appellant-
Insurance Company was taken up for hearing on 25.01.2021, it
was brought to the notice of this Court that the claimant-
Sundaram died on 14.05.2017, even before the award was passed by
the Tribunal. Therefore, his legal heirs were impleaded as
respondents/claimants in CMA.No.169 of 2018. That apart, the



legal heirs of the deceased/claimant themselves have filed an independent appeal in CMA.No.3393 of 2019, seeking enhancement of the compensation. As the appeals arise out of the same award passed by the Tribunal, they are taken up for disposal together.

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4. The claim petition in MCOP.No.203 of 2013 was filed by the injured/Sundaram seeking compensation for partial permanent disability suffered by him in the accident. After due enquiry, the Tribunal, on assessment of the evidence, had awarded a sum of Rs.11,33,000/- as compensation.

5. Since the claimant died before the award was passed by the Tribunal, it is contended by the counsel for the appellant-insurance company that after the death of the original claimant, if at all, the Tribunal ought to have awarded compensation for the medical expenses incurred by the claimant and the amount awarded under other heads are legally untenable inasmuch as the injuries are per se personal in nature. After the death of the claimant, his legal heirs cannot be permitted to prosecute this appeal seeking enhancement.

6. This submission of the learned counsel for the appellant-Insurance Company cannot be countenanced. The claim petition was filed by the deceased- claimant on 29.04.2013 for the injuries suffered by the deceased claimant in the accident that had taken place on 07.09.2011. Before the Tribunal, the deceased claimant himself has deposed evidence as PW1 along with two other witnesses as PWs. 2 and 3 and all the witnesses were cross-examined. Thereafter, just before the pronouncement of the judgment on 09.10.2017, the deceased-claimant died on 14.05.2017. It appears that the death of the deceased was not brought to the notice of the Tribunal and that is the reason why, the Insurance Company has filed the present appeal in C.M.A. No. 168 of 2019 in the name of the claimant, who died even before the pronouncement of the award by the Tribunal. Ultimately, when CMA No. 168 of 2019 was taken up for hearing on 25.01.201, it was brought to the notice of this Court regarding the death of the claimant, who originally filed MCOP No. 203 of 2013 before the Tribunal. In such circumstances, it cannot be said that the claimant is only entitled for medical expenses incurred by him after his death during the pendency of the claim petition. The argument of the counsel for the appellant is, therefore, rejected. At the same time, we are also of the view that after the death of the deceased- claimant, his legal heirs are not entitled to maintain a separate appeal seeking enhancement of compensation. In effect, we hold that the appeal filed by the legal heirs of the deceased claimant is not maintainable.



7. As regards the appeal filed by the appellant-Insurance Company in C.M.A. No.169 of 2018, on perusal of the records, it is seen that the claimant was 43 years at the time of accident. Due to the injuries sustained in the accident, he was admitted in the Salem Government Hospital for a period of 40 days. During his hospitalization, his both legs were amputated beyond his thigh. P.W.2, the Doctor who was examined the Tribunal and certified that the disability is functional disability and he assessed it had 100%. The Doctor also stated that the appellant could not discharge his normal duties as before and he is the dependant of others. The Tribunal also noticed that the appellant/claimant was owning the tractor and engaged in transportation of some goods through his tractor. It is also brought on record that the appellant was earning Rs.20,000/- per month and that such income, he was maintaining his family considering of his wife and two children, after the accident the claimant has totally lost his earning capacity. Taking into account, all the above factors, the Tribunal has awarded a sum of Rs.11,33,000/- by referring to multiplier method for such purpose, the Tribunal has taken the income of the deceased at Rs.6,000/- per month notionally. In our opinion, the sum of Rs.6,000/- per month fixed as income of the deceased/claimant is just and reasonable. The Tribunal also awarded a sum of Rs.50,000/- towards pain and sufferings, Rs.15,000/- towards Extra Nourishment, Rs.50,000/- towards loss of amenities and Rs.10,000/- towards transportation. The award of these amounts by the Tribunal is very reasonable and fair and we are not inclined to interfere with the same. Similarly we also do not find any reason to enhancement of the said amount, the appellants who are the legal heirs of the deceased/claimant.

Both the appeals are accordingly dismissed. The Insurance Company is directed to deposit the total compensation of Rs.11,33,000/- as determined by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the first appellant/claimant is permitted to withdraw a sum of Rs.6,33,000/- and the second and third appellant/claimant is permitted to withdraw a sum of Rs.2,50,000/- each, in accordance with law, less the amount if any already withdrawn by them. Consequently connected Miscellaneous Petition is closed. No Costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



dh
To

1.The Motor Accident Claims Tribunal,
Sub Court, Rasipuram.

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

+2cc to Mr.C.Thangaraju, Advocate Sr.8352

+1cc to Mr.G.Vasudevan, Advocate Sr.8115

C.M.A.Nos.3393 of 2019 & 169 of 2018
and
CMP.2068 of 2018

gmr[col]
srg 22/09/2021