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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.Nos.4404 of 2019 & 710 of 2020

C.M.A.No.4404 of 2019:

M. Chinnappa Raj

... Appellant/Petitioner

Vs.

1. P. Kalaiarasu

2. Royal Sundaram Alliance Insurance Co. Ltd.,
No.1, Club House Road,
Sundaram Building,
Anna Salai,
Chennai 600 002.

... Respondents/Respondent

C.M.A.No.710 of 2020:

M/s.Royal Sundaram Alliance Insurance Company Limited
No.1, Club House Road,
Sundaram Building,
Anna Salai, Chennai 600 002.

... Appellant/2nd Respondent

Vs.

1. M.Chinnappa Raj

... Respondent/Petitioner

2. P. Kalaiarasu

... Respondent/1st Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 17.07.2018 made in M.C.O.P.No.7779 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes, Chennai.

In C.M.A.No.4404 of 2019

For Appellant

: Mr.Amar D.Pandiya

for M/s.K.Suryanarayanan



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For R1 : No Appearance

For R2 : Mr.M.B.Raghavan

In C.M.A.No.710 of 2020

For Appellant : Mr.M.B.Raghavan

For R1 : Mr.Amar D.Pandiya
for M/s.K.Suryanarayanan

For R2 : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 17.07.2018 made in M.C.O.P.No.7779 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes, Chennai.

2. Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

3.The appellant in C.M.A.No.4404 of 2019 is the claimant in M.C.O.P.No.7779 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes, Chennai. He filed the above claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.10.2013.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving of the car driver bearing Registration No.TN-05-AK-2819, of which the Car belongs to the first respondent and directed the 2nd respondent being insurer of the said Car to pay the award amount i.e., a sum of Rs.18,26,700/- as compensation to the claimant.

5. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with C.M.A.No.4404 of 2019 for enhancement of compensation. Challenging the quantum of compensation awarded by the Tribunal dated 17.07.2018 made in M.C.O.P.No.7779 of 2013, the 2nd respondent-Insurance Company has come out with C.M.A.No.710 of 2020.

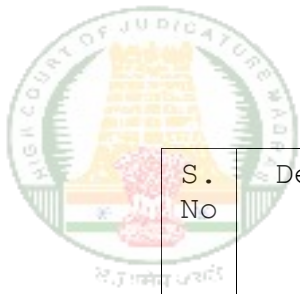


6. The learned counsel appearing for the 2nd respondent-Insurance Company contended that for the injuries suffered by the claimant the Tribunal has awarded Rs.15,30,000/- under the head "loss of future earning capacity" which appears to be on the higher side and that the claimant was only 31 years old and was working as a Co-ordinator in Vellammal Higher Secondary School, Mugappair West, Chennai and was drawing a sum of Rs.26,000/- on the date of accident. He further submitted that claimant suffered only a fracture injury and it does not affect its earning capacity and he is still working and at present drawing a sum of Rs.45,000/- per month and that the compensation awarded by the Tribunal under the head "loss of future earning capacity" is excessive and prayed for setting aside the awarded amount.

7. The learned counsel appearing for the claimant contended that the Tribunal erred in awarding only a meagre sum of Rs.18,26,700/- as compensation for the injuries sustained by the appellant/claimant. The appellant sustained fracture of tibia right lower limb and surgery of IMIL nailing right tibia under SA was done. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8. Heard the learned counsel appearing for the claimant as well as 2nd respondent-Insurance Company and perused the materials available on record.

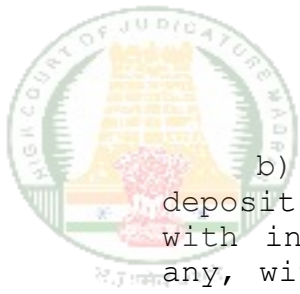
9. From the materials available on record, it is seen that the accident took place on 07.10.2013 and the claimant suffered fracture of tibia right lower limb and surgery of IMIL nailing right tibia under SA was done. As the claimant suffered only fracture injury it does not affect his earning capacity and also taking into account that the claimant is still working in the above mentioned school and drawing a sum of Rs.45,000/- p.m. which is ascertained by the learned counsel for the appellant through their investigator and the same is not disputed, the amount awarded as Rs.15,30,000/- under the head Loss of future earning capacity is set aside. Though the disability assessed by the Doctor at 50% is correct, the Tribunal assessed the disability only at 25%, which ought not to have been reduced by the Tribunal and hence the same is enhanced to 50% from 25%. The amount awarded by the Tribunal towards disability is modified to Rs.1,50,000/- (3,000 x 50%). However the compensation awarded in other heads are very low and this Court inclines to enhance the same. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of future earning due to loss of earning power	15,30,000/-	Nil	Set aside
2.	Compensation for continuing of permanent disability	25% x 3 = 75,000/-	50%x3= 1,50,000/-	Enhanced
3.	Pain and sufferings	25,000/-	Rs.50,000/-	Enhanced
4.	Loss of Income	1,04,000/-	1,04,000/-	Confirmed
5.	Transport to hospital	2,000/-	20,000/-	Enhanced
6.	Extra-nourishment	25,000/-	25,000/-	Confirmed
7.	Damage to clothing and articles	3,000/-	Rs.3,000/-	Confirmed
8.	Medical expenses	62,700/-	Rs.62,700/-	Confirmed
9.	Attender charges	NIL	Rs.25,000/-	Enhanced
10.	Loss of Amenities	NIL	Rs.30,000/-	Enhanced
11.	Future Medical Expenses	NIL	Rs.30,000/-	Enhanced
	Total	Rs.18,26,700/-	Rs.4,99,700/- rounded off to Rs.5,00,000/-	

10. In the result, C.M.A.No.4404 of 2019 filed by the Claimant is dismissed and C.M.A.No.710 of 2020 filed by the Insurance Company is partly allowed.

a) the compensation awarded by the Tribunal at Rs.18,26,700/- is hereby reduced to Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.



b) the 2nd respondent-Insurance Company is directed to deposit the modified award amount now determined by this Court with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.7779 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Small Causes, Chennai.

c) on such deposit being made, the Tribunal shall transfer the modified amount along with interest and cost, less the amount if any, already withdrawn, to the claimant's bank account through RTGS within a period of one week thereon.

11. The learned counsel for the second respondent-Insurance Company submitted that 50% of the award amount has already been deposited as per the interim order passed by this Court on 26.02.2020. In that event the claimant is entitled to withdraw the modified amount ordered by this Court together with interest and costs and the balance amount shall be refunded to the Insurance Company. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Special Subordinate Court No.2,
Small Causes, Chennai.

+1CC to Mr.Suryanarayanan, Advocate, Sr.No.37349

C.M.A.Nos.4404 of 2019
& 710 of 2020

RLD (CO)
K.RK. (25.10.2021)