



WEB COPY



C.M.A.Nos.410 and 1468 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.410 and 1468 of 2017

and

C.M.P.No.2858 of 2017

Royal Sundaram Aliance Insurance Company Limited,
Subramaniam Buildings,
No.1 Club House Road,
2nd Floor, Anna Salai,
Chennai - 600 002.

... Appellant
in C.M.A.No.410 of 2017

Vs.

1. K.Shahul Hameed (died)
2. M/s.Ahluwalia Contracts India Limited,
No.125, OMR Road,
Kavalur, Chennai - 603 103.
3. S.Sharmila
4. S.Sulfiya Banu
5. Minor Shahid Abdullah

... Respondents
in C.M.A.No.410 of 2017

(R5 minor represented by R3 & Respondents 3 to 5 are brought on record as legal heirs of the deceased R1 viz., K.Shahul Hameed vide Court order dated 15.09.2023 made in C.M.P.Nos.17449, 17452 and 17453 of 2023 in C.M.A.No.410 of 2017 by RKMJ)



C.M.A.Nos.410 and 1468 of 2017

1. K.Shahul Hameed (died)
2. S.Sharmila
3. S.Sulfiya Banu
4. Minor Shahid Abdullah

... Appellants
in C.M.A.No.1468 of 2017

(Minor represented by mother and next friend S.Sharmilla.
Sole appellant died. Appellants 2 to 4 brought on record as
legal heirs of the deceased sole appellant viz., K.Shahul
Hameed vide Court order dated 09.06.2023 made in
C.M.P.Nos.8628, 8648, 8650 of 2023 and 2858 of 2017 in
C.M.A.Nos.1468 to 1470 and 410 of 2017 by AANJ)

Vs.

1. M/s.Ahluwalia Contracts India Limited,
No.125, OMR Road,
Kavalur, Chennai - 603 103.
2. Royal Sundaram Aliance Insurance Company Limited,
Subramaniam Buildings,
No.1 Club House Road,
2nd Floor, Anna Salai,
Chennai - 600 002.

... Respondents
in C.M.A.No.1468 of 2017

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 25.07.2016 made in M.C.O.P.No.936 of 2013 on the file of the Motor Accidents Claims Tribunal-III, Court of Small Causes, Chennai.



C.M.A.Nos.410 and 1468 of 2017

In C.M.A.No.410 of 2017:

For Appellant : Mr.G.Vasudevan

For Respondents : Ms.P.T.Saleem Fathima for R3 to R 5
Not ready notice for R2

In C.M.A.No.1468 of 2017:

For Appellants : Ms.P.T.Saleem Fathima

For Respondents : R1 - Exparte
Mr.G.Vasudevan or R2

COMMON JUDGMENT

The appellant / Insurance Company in C.M.A.No.410 of 2017, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal-III, Court of Small Causes, Chennai, in M.C.O.P.No.936 of 2013, dated 25.07.2016, has filed the above said appeal.

2. The claimant has filed C.M.A.No.1468 of 2017 seeking enhancement of compensation. However, pending the appeal, the claimant died. Hence, the legal representatives of the claimant have been brought on record by this Court.



C.M.A.Nos.410 and 1468 of 2017

WEB COPY

3. The claimant viz., Shahul Hameed alleged to be earning a sum of Rs.30,000/- per month, met with an accident. On 13.08.2012 when the claimant was travelling in a Toyota Innova Car bearing Registration No. TN-05-AE-0002, a Bolero Car bearing Registration No.TN-22-CY-7176 driven by its driver in a rash and negligent manner, dashed against the Toyota Car in which the claimant suffered injuries for which he was admitted in the hospital and due to the loss suffered on account of the accident, the claimant, claiming compensation for the injuries suffered and also for loss of income, had filed the claim petition. The said claim was resisted by the appellant / Insurance Company. The first respondent therein is the owner of the Bolero Car.

4. The claimant has filed the claim petition claiming compensation of a sum of Rs.22,00,000/-. The Tribunal, after analysing the oral and documentary evidence available on record, awarded compensation of Rs.19,78,100/- and directed the Insurance Company is liable to pay the same.



C.M.A.Nos.410 and 1468 of 2017

WEB COPY

5. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the impugned award and would submit that despite the fact that the claimant has not suffered permanent disability on account of injuries sustained by him, the Tribunal has erroneously adopted the multiplier method and has also fixed the disability of the first respondent / claimant at 30%. According to them, the nature of injuries sustained by the first respondent / claimant do not legally entitle him to get compensation based on the multiplier method. Further, the Tribunal went wrong in finding that the claimant was suffering from disability at 30% for the alleged fracture of tibia left, right humerus etc. He further submitted that if the claimant establishes that he has suffered with permanent disability and he is not able to avocate even after the accident and if it is established by way of oral or documentary evidence, then the Tribunal can adopt the multiplier method for permanent disability. The compensation awarded by the Tribunal under the other heads are also excessive, hence the learned counsel prays for setting aside the award.



C.M.A.Nos.410 and 1468 of 2017

WEB COPY

6. Per contra, the learned counsel for the respondents / claimants submitted that though the doctor has assessed the partial permanent disability at 50%, the Tribunal has fixed the loss of earning capacity only at 30%. The Tribunal ought to have been fixed the loss of earning capacity at 50% as assessed by the doctor. In such circumstances, there is no valid ground for this Court to interfere with the award passed by the Tribunal.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The nature of injuries sustained by the claimant has not been disputed by the appellant / Insurance Company. However, the only dispute they are raising is that the nature of injuries do not entitle the claimant to get the compensation for the loss of earning capacity by adopting the multiplier method.



C.M.A.Nos.410 and 1468 of 2017

WEB COPY

9. Admittedly, as seen from the evidence available on record, the claimant was hospitalised only for fifteen days as a result of the injuries sustained by him. He has also underwent surgeries as seen from the evidence available on record. The said fact was also not disputed by the learned counsel for the Insurance Company before this Court. The doctor who examined the claimant has assessed the disability at 50% based on the injuries sustained by him.

10. Considering the nature of injuries sustained by the claimant though the doctor assessed the partial permanent disability of the claimant at 50%, the Tribunal had assessed the disability only at 30% and in the absence of any material to show that the claimant has suffered permanent disability, this Court is of the considered view that the Tribunal has erroneously adopted the multiplier method for the purpose of assessing the loss of earning capacity of the claimant as he has not suffered any permanent disability. The Tribunal ought to have fixed the loss of earning capacity of the claimant on percentage basis, but instead has adopted the multiplier method, which is not correct.



C.M.A.Nos.410 and 1468 of 2017

WEB COPY

11. The accident happened on 13.08.2012. This Court is of the considered view that it will be a just compensation, if the loss of earning capacity of the claimant is calculated at Rs.4,000/- per percentage of disability. Though the doctor has assessed the disability at 50%, this Court is inclined to fix the disability of the claimant at 40%, but it can only be treated as a partial and permanent disability and not as permanent disability. Therefore, the loss of earning capacity fixed by the Tribunal under the impugned award to the claimant is reduced to Rs.1,60,000/-, calculated for 40% disability at Rs.4,000/- per percentage of disability, instead of Rs.14,61,600/- fixed by the Tribunal.

12. In view of the above facts and circumstances, this Court is of the considered view that there is no ground for interference with regard to the compensation awarded by the Tribunal under other heads. For the foregoing reasons, the award of the Tribunal is hereby reduced in the following manner :



C.M.A.Nos.410 and 1468 of 2017

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
1	Loss of Income	Rs.1,01,535/-	Rs.1,01,535/-
2	Attender charges	Rs.3,225/-	Rs.3,225/-
3	Transport to hospital	Rs.10,000/-	Rs.10,000/-
4	Extra nourishment	Rs.25,000/-	Rs.25,000/-
5	Damage to clothing	Rs.1,000/-	Rs.1,000/-
6	Medical bills	Rs.2,90,723.70/-	Rs.2,90,723.70/-
7	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
8	Damages for mental and physical shock	Rs.10,000/-	Rs.10,000/-
9.	Loss of amenities	Rs.25,000/-	Rs.25,000/-
10.	Loss of earnings	Rs.14,61,600/-	Rs.1,60,000/-
	Total	Rs.19,78,083/- Rounded off Rs.19,78,100/-	Rs.6,76,483/-

13. In the result,

- (i) C.M.A.No.410 of 2017 stands partly allowed by reducing the compensation from Rs.19,78,100/- to Rs.6,76,483/-, as indicated above. The appellant / Insurance Company is directed to deposit the entire award amount (reduced amount) as assessed by this Court



WEB COPY



C.M.A.Nos.410 and 1468 of 2017

together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.936 of 2013 on the file of the Motor Accidents Claims Tribunal-III, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the wife of the deceased claimant, through RTGS, within a period of two weeks thereafter. It is made clear that the appellant / Insurance Company is permitted to withdraw excess award amount, if any deposited by them before the Tribunal.

(ii) C.M.A.No.1468 of 2017 is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

05.10.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



WEB COPY



C.M.A.Nos.410 and 1468 of 2017

To

1. The Motor Accidents Claims Tribunal-III,
Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



WEB COPY



C.M.A.Nos.410 and 1468 of 2017

M.DHANDAPANI, J.

vji

**C.M.A.Nos.410 and 1468 of 2017
and
C.M.P.No.2858 of 2017**

05.10.2023