IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.04.2024**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3324 of 2021
and
Cros. Obj.No.42 of 2022
and
C.M.P.No.18903 of 2021

C.M.A.No.3324 of 2021:

Royal Sundaram Alliance Insurance Co. Ltd.,
T.V.S. Co-operative Stores Building,
37, Krishna Rao Tank Street, Madurai - 625 001. ... Appellant

Vs.

1.Jawahar
2.Murugesan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 27.04.2018 made in M.C.O.P. No.73 of 2018 on the file of the Motor Accident Claims Tribunal (Sub Court), Omalur.

For Appellant : Mr.K.Vinod

For Respondents : Ms.M.Adhishree for R1

R2 - No Appearance

Cros. Obj.No.42 of 2022:

Jawahar ... Appellant

Vs.

1.M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
T.V.S. Co-operative Stores Building,
37, Krishna Rao Tank Street, Madurai - 625 001.

2.Murugesan ... Respondents

PRAYER: Cross Objection filed for enhancement of the compensation awarded in the Judgment and Decree dated 27.04.2018 made in M.C.O.P. No.73 of 2018 on the file of the Motor Accident Claims Tribunal (Sub Court), Omalur, Salem District.

For Appellant : Ms.M.Adhishree

For Respondents : Mr.K.Vinod for R1

R2 - No Appearance

COMMON JUDGMENT

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned award on the ground that the Tribunal has erroneously adopted the multiplier method and has erroneously assessed the loss of earning capacity of the appellant / claimant. A cross objection has also been filed by the claimant in Cros. Obj. No.42 of 2022, seeking for enhancement of compensation.

2. The Tribunal under the impugned award has granted a compensation of Rs.10,25,472/- to the claimant as detailed hereunder:

Heads	***Amount awarded by the Tribunal in Rs.***
Loss of earning capacity	8,16,480
Medical Bills	88,992
Pain and Sufferings	60,000
Attender Charges	10,000
Transport	15,000
Extra Nourishment	10,000
Future Medical expenses	25,000
Total	**10,25,472**

3. The first respondent / claimant was 19 years old at the time of the accident, which happened on 10.07.2010. The Tribunal has fixed the notional monthly income of the first respondent / claimant at Rs.6,000/-. This Court, after giving due consideration to the year of the accident and the age of the first respondent / claimant, is of the considered view that the assessment of the notional monthly income of the first respondent / claimant at Rs.6,000/- is a correct assessment and it does not call for any inference by this Court.

4. The first respondent / claimant sustained the following injuries as a result of the accident caused by a vehicle insured with the appellant:

" 1. Grade III Open fracture left tibia (intact

fibula) with enders nail insitu

2. 2, 3 Metatarsal Fractures left foot with K wires insitu

3. Circumfrential degloving right lower limb with skin loss from the thigh to ankle".

5. The nature of injuries sustained by the first respondent / claimant as detailed supra is also not disputed by the appellant Insurance Company. The Doctor, who has examined the first respondent / claimant has assessed the first respondent's / claimant's partial permanent disability at 63%. The Tribunal has accepted the findings of the Doctor and has, accordingly, assessed the first respondent's / claimant's partial permanent disability at 63%.

6. The first respondent / claimant was hospitalized for two spells viz., one between 10.07.2010 and 18.07.2010 and another between 18.07.2010 and 21.08.2010. The period of hospitalization of the first respondent / claimant has also not been disputed by the appellant Insurance Company as seen from the evidence available on record. The first respondent / claimant has also produced discharge summary for the period of his hospitalization. The nature of injuries sustained by the first respondent / claimant are

grievous in nature and the Doctor had assessed the disability of the first respondent / claimant at 63%. No contra evidence has been produced by the appellant Insurance Company to disprove the said assessment made by the Doctor.

7. After giving due consideration to the nature of injuries sustained by the first respondent / claimant and after giving due consideration to the long period of hospitalization of the first respondent / claimant, this Court is of the considered view that the Tribunal has rightly adopted the multiplier method for assessing the loss of earning capacity of the first respondent / claimant. Though the learned counsel for the appellant Insurance Company contends before this Court that the Tribunal ought not have applied the multiplier method, this Court rejects the said contention in view of the nature of injuries sustained by the first respondent / claimant and the long period of hospitalization.

8. The first respondent / claimant has also filed a cross objection before this Court, seeking for enhancement of compensation. However, after

giving due consideration to the overall compensation awarded by the Tribunal under the impugned award, this Court is not inclined to grand enhancement of any additional compensation to the first respondent / claimant, as the first respondent / claimant has been adequately compensated under the impugned award. The Tribunal has awarded a compensation of Rs.8,16,480/- towards loss of earning capacity, Rs.88,992/- towards medical bills, as per the medical bills produced by the first respondent / claimant which have been marked as Ex.P6, Rs.60,000/- towards pain and suffering, Rs.10,000/- towards attender charges, Rs.15,000/- towards transportation, Rs.10,000/- towards extra nourishment and Rs.25,000/- towards future medical expenses, which in the considered view of this Court is a just compensation.

9. For the foregoing reasons, this Court is of the considered view that there is no merit in both, the appeal viz., the appeal filed by the Insurance Company in C.M.A.No.3324 of 2021 and the cross objection filed by the claimant in Cros. Obj. No.42 of 2022. Accordingly, C.M.A.No.3324 of 2021 and Cros. Obj. No.42 of 2022 are dismissed. The appellant Insurance Company is directed to deposit the entire award amount, after deducting the

amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.73 of 2018** on the file of the **Motor Accident Claims Tribunal (Sub Court), Omalur**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

10. The first respondent / claimant is permitted to withdraw the said amount, once it is deposited by the appellant Insurance Company, by filing an appropriate application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.73 of 2018** to the bank account of the first respondent / claimant directly through RTGS, after deducting the amount already transferred to the claimant if any, within a period of **one week** thereafter. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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To

1. The Motor Accident Claims Tribunal (Sub Court), Omalur.

2. The Section officer, Record Section, High Court of Madras.

C.M.A.No.3324 of 2021
and
Cros. Obj.No.42 of 2022

22.04.2024