BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD)No.391 of 2017
and
C.M.P.(MD) No.4219 of 2017

Reliance General Insurance Company Ltd,
Through its Branch Manager,
No.10/4/4, Thaha Palaza
2nd Floor, South Bye Pass Road,
Vannarapttai, Tirunelveli ... Appellant/Respondent-2

Vs.

1.Sakthivel ...1st Respondent/Petitioner
2.Serman ...2nd Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 17.10.2016 made in M.C.O.P.No.1139 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

For Appellants : M/s.K.R.Shivashankari for M/s.S.Srinivasa Raghavan
For First Respondent : M/s.Xaveer Rajini

JUDGMENT
(Judgment of the Court was delivered by T.S.SIVAGNANAM.J.)

Heard Mr.K.R.Shivashankar, learned counsel for the appellant and Mr.Xaveer Rajini, learned counsel for the first respondent.

2.This appeal is directed against the judgment and decree in M.C.O.P.1139 of 2014, dated 17.10.2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Triunelveli. The Insurance Company is on appeal as against the award and challenge is to the quantum.

3.The respondent/claimant filed the claim petition before the Tribunal claiming a total compensation of Rs.79 lakhs and restricted to Rs.25 lakhs for the injuries sustained by him in a motor vehicle accident, took place on 26.03.2014, at about 8.p.m, near St.Joseph Teachers College on Kalakkadu - Naguneri Road, in which a motor cycle owned by the second respondent and insured with the appellant, was involved with an accident. A criminal case was registered before Kalakkadu Police Station, in Crime No.112 of 2014 under Sections 279 and 337 of I.P.C. The claimant sustained fractures in the hand as well as in the foot and stated that he has suffered 75% disability. Before the Tribunal, the claimant stated that he was carrying on wholesale business and on account of the accident, he suffered permanent disability and he has to walk with the help of a stick and also requires further medical treatment and surgeries to be performed in future.

4.The appellant/Insurance Company resisted the claim, stating that the accident had occurred only on account of the rash and negligent on the part of the driver of the second respondent and it is the claimant, who turned towards the right hand side and dashed against the motor cycle and therefore, he contributed to the accident. It is submitted that the liability of the Insurance Company depends upon several factors and the owner will be made liable for payment of compensation, in a case, where the driver is not having license at all.

5.Apart from the above contention raised by the claimant, with regard to his age, income and occupation were also disputed.

6.Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.19 were marked and on the side of the appellant as well as the second respondent, no oral evidence was let in and no document was marked.

7.The Tribunal has framed three questions for consideration viz.

(i) Is it correct to state that the accident occurred due to negligence of the driver of the first respondent?

(ii) Whether the claimant is entitled to get the compensation as claimed in the petition? If so, who is liable to pay compensation?

(iii) What is the quantum of compensation the claimant is entitled to?

8.Considering the oral and documentary evidence, the tribunal had decided that the accident had occurred due to negligence on the part of the driver of the first respondent and since the first respondent vehicle was insured with the second respondent, the second respondent Insurance Company is liable to pay the compensation. On perusal of the memorandum of appeal the Appellant/second respondent Insurance Company has not challenged the finding given by the Tribunal in this regard.

9.As far as the quantum of compensation is concerned, the claimant marked Ex.P.16 income tax records and the Tribunal taking into consideration of the said document, fixed monthly income at Rs.18,000/-, taking note of the age of the injured and the nature of injuries, the Tribunal adopted the multiplier method and thereafter, arrived at the total loss of income at Rs.15,12,000/-. (18,000X12x14X50%).

10.The appellant/Insurance company has not challenged the liability fixed on the respondent. But only disputed the quantum of the compensation. Therefore, we find that except Rs.50,000/- towards right leg defacement and amputation of small finger in the right hand and Rs.10,000/- towards loss of inconvenience, the compensation under all the other heads are fair and reasonable and not excessive. So far as the above two heads are concerned, since the Tribunal has calculated the loss of income by adopting multiplier method and awarded Rs.1,00,000/- towards pain and suffering and Rs.1,20,000/- for loss of income during the period of medical treatment, the amount awarded towards inconvenience caused to the claimant at Rs.10,000/- would effect in double payment and similarly the award of Rs.50,000/- towards right leg defacement and amputation of small finger in the right hand is also double payment. Therefore, to that extent, we are inclined to interfere with the award of the Tribunal and modify the same accordingly and the 9% of interest awarded by the Tribunal is reduced to 7.5% p.a.

11.Therefore, we are of the considered view that the claimants are entitled to the award of compensation as follows:

S.No	**Description**	**Amount awarded by Tribunal (Rs.)**	**Amount awarded by this Court (Rs.)**	**Award confirmed or enhanced or granted**
1.	**For Loss of Income**	**15,12,000/-**	**15,12,000/-**	**Confirmed**
2.	**For future treatment**	**1,00,000/-**	**1,00,000/-**	**Confirmed**
3.	**Pain and sufferings**	**1,00,000/-**	**1,00,000/-**	**Confirmed**
4.	**For right leg defacement and amputation of small finger in the right hand**	**50,000/-**	**Not granted**	**Since it is double payment, not granted**

5.	**Transportation Expenses**	**20,000/-**	**20,000/-**	**Confirmed**
6.	**Loss of income during the treatment period**	**1,20,000/-**	**1,20,000/-**	**Confirmed**
7.	**For attendant charges**	**10,000/-**	**10,000/-**	**Confirmed**
8	**For extra nourishment**	**10,000/-**	**10,000/-**	**Confirmed**
9.	**Ex.P.8 Medical Bill**	**3,56,633/-**	**3,56,633/-**	**Confirmed**
10.	**Ex.P.9 Medical Bill**	**1,00,250/-**	**1,00,250/-**	**Confirmed**
11.	**Ex.P.11 Medical Bill**	**74,907/-**	**74,907/-**	**Confirmed**
12.	**Ex.P.10 Medical Bill**	**38,080/-**	**38,080/-**	**Confirmed**
13	**For loss of convenience**	**10,000/-**	**Not granted**	**Since it is double payment, not granted**
	Total	**25,01,870/-**	**24,41,870/-**	
	Rounded to	**25,00,000/-**		

12. In the result, this Civil Miscellaneous Appeal in C.M.A.(MD)No.391 of 2017 is partly allowed and the compensation awarded by the Tribunal is modified as shown above. The appellant Insurance Company is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, if already not deposited, if already deposited any amount less the amount already deposited, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. The appellant is permitted to withdraw the excess amount, if any. No costs.

Sd/-
Assistant Registrar((PA)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Special Subordinate Court),
Tirunelveli

+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.54550

+One cc to M/s.S.Xavier Rajini, Advocate, SR.No.55065

Ns
RL/4C/5P/JC/SAR1/7/7/2017

Judgment made in

C.M.A.(MD)No.391 of 2017
and
C.M.P.(MD) No.4219 of 2017

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