IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.85 of 2016
and CMP No.853 of 2016

Reliance General Insurance Co. Ltd.,
No.89, 100 Feet Road, Vivyan Palaza,
Ground Floor, Mudaliyar Pet,
Pondicherry 605 004. ... Appellant/2nd Respondent

-vs-

1. Mahesh ...1st Respondent/Claimant

2. P.Velmurugan ... 2nd Respondent/1st Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 04.06.2015 made in MCOP.No.12 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

For Appellant : Mr. S.Arun Kumar

For 1st Respondent: Mr. S.Rajagopal

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in this appeal by the Insurance Company is to the award of the Motor Accident Claims Tribunal, Cuddalore, dated 04.06.2015, made in MCOP No.12 of 2013 granting a sum of Rs.17,15,000/- as compensation for the injury suffered by the claimant in the road accident that occurred on 23.11.2012.

2. According to the claimant, on 23.11.2012 when the claimant was riding a Motor Cycle bearing Registration No.PY-01-BJ-8329, on Panruti –Cuddalore Main Road, on the extreme left side of the road a Tipper Lorry owned by the 2nd respondent

herein, insured with the appellant Insurance Company came from behind and dashed against the two wheeler. As a result of the accident, the 1st respondent claimant was thrown out of the vehicle and he suffered grievous injuries, resulting in amputation. Contending that it is the negligence of the driver of the lorry that caused the accident and the resultant injuries had caused a permanent disability, the claimant sought for a compensation of Rs.25,00,000/-.

3. The Tribunal on an analysis of the evidence on record, particularly the FIR registered by the Nellikuppam Police, marked as Ex.P1, concluded that the driver of the lorry bearing Registration No.TN-01-V 4188 had caused the accident by his negligent driving.

4. On the quantum, the Tribunal found that the 1st respondent claimant was an inpatient for nearly 72 days. The injuries suffered by him are grievous in nature. P.W.2 Doctor had deposed that the petitioner had undergone two surgeries in the right leg and left shoulder at JIPMER Hospital at Pondicherry. P.W.2 has assessed the disability caused due to the injuries at 85%. It is not in dispute that the 1st respondent claimant had suffered amputation because of the accident. The Tribunal relying upon the evidence of P.W.2 concluded that the injuries suffered resulting in amputation, would have a direct bearing on the future earning capacity of the claimant/ 1st respondent.

5. The claimant had contended that he was earning a sum of Rs.7,500/- per month and the entire income is lost due to the accident. The Tribunal took the income of the claimant/ 1st respondent at Rs.5,000/- per month, added Rs.2,500/- towards future prospects, applied a multiplier of 17 and arrived at the total compensation for loss of earning capacity as Rs.15,30,000/-.

6. The award of the Tribunal under various heads is as follows:

S.No.	Heads	Amount
1.	Loss of earning capacity	Rs. 15,30,000/-
2.	Transport to hospital	Rs. 10,000/-
3.	Pain and Sufferings	Rs. 50,000/-

S.No.	Heads	Amount
4.	Loss of Amenities and loss of life expectation	Rs. 50,000/-
5.	Future Treatment (for 60% disability (1000 x 60))	Rs. 60,000/-
6.	Attendant Charges	Rs. 10,000/-
7.	Medical expenses	Rs. 5,000/-
	TOTAL	Rs.17,15,000/-

7. It is this award which is now challenged by the Insurance company as excessive.

8. We have heard Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company and Mr.S.Rajagopal, learned counsel appearing for the 1st respondent/claimant. Notice sent to the 2nd respondent/insurer has been returned as unclaimed. It is seen from the records that the 2nd respondent as remained ex-parte before the Tribunal. Hence, notice to him, in this appeal, is dispensed with.

9. Mr.S.Arun Kumar, learned counsel appearing for the Insurance company would contend that the Tribunal having arrived at the disability at 85% should not have taken the functional disability at 100%. He would also fault the Tribunal for adding 50% towards future prospects is on higher side.

10. Per contra, Mr.S.Rajagopal, learned counsel appearing for the 1st respondent claimant would contend that the Tribunal was not right in taking the income as Rs.5,000/-. Considering the fact that the accident had occurred in the year 2012, he would submit that adoption of notional income at Rs.5,000/- is below par.

11. We have considered the rival submissions. It is not in dispute that the claimant/1st respondent had suffered an amputation in view of the accident. The disability has been assessed by the Doctor at 85%. It is claimed that the 1st respondent/claimant, he was earning about Rs.7,500/- per month. Even in the absence of any evidence, the Tribunal should have taken his income at least to Rs.7,500/- per month at Rs.250/- per day. Even assuming percentage of disability is reduced to 85% and the future prospects is reduced to 40%. The same may

not make much difference in the overall award, since we find that the monthly income adopted by the Tribunal is very low. The compensation awarded under the other heads is also very reasonable and we do not think that it is a fit case where we should interfere with the award of the Tribunal.

12. In view of the above, the appeal is dismissed, confirming the award of the Tribunal. There will no order as to costs. Consequently, the connected miscellaneous petition is closed.

13. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. It is seen from the order dated 15.09.2016 the claimant was permitted to withdraw a sum of Rs.7,50,000/- without any interest and the balance amount has been directed to be deposited any one of the Nationalised Bank in a fixed deposit till disposal of the appeal. The claimant is permitted to withdraw the entire amount.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
II Additional Subordinate Judge,
Cuddalore.

+1cc to Mr.S.Arunkumar, Advocate Sr.63624

CMA.No.85 of 2016
and CMP No.853 of 2016

kgk[co]
srg 25/10/2018