IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

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

C.M.A. No.2538 of 2017
and
C.M.P.No.13799 of 2017

Reliance General Insurance Company Limited,
Rasi Towers, 2nd Floor, 2nd Avenue,
Plot No.2054, Anna Nagar, Chennai - 40.
... Appellant

-vs-

1.John Britto
2.Mahesh
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in MACTOP.No.3073 of 2011 dated 05.08.2015 on the file of the IV Small Causes, Chennai.

For Appellant : Mr.K.Moorthy

For Respondents: Mr.K.Varadha Kamaraj for R1

J U D G M E N T
[Judgment of the Court made by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.12,69,500/- has come forward with this appeal. It is a case of injury.

2. According to the claimant, while he was riding his two-wheeler bearing registration No.TN-59-AP-6867 at Mannar Swamy Koil Street, Royapuram, Chennai at about 15.20 hours on 10.12.2010, a tipper lorry bearing registration No.TN-18-D-3738 belonging to the 1st respondent came from behind at a high speed and dashed against the two-wheeler, as a result of the accident, the claimant who was the rider of the two-wheeler sustained grievous injuries. Contending that he suffered pecuniary loss as well as pain and suffering due to the injuries suffered in the accident, the claimant would seek a compensation of Rs.12,00,000/-.

3. The claim petition was resisted by the Insurance Company contending that the lorry was not responsible for the accident, it was the claimant who drove his two-wheeler in a rash and negligent manner and caused the accident.

4. The Tribunal relying upon the evidence of PW1 and the fact that the FIR was lodged against the lorry driver held that it was the lorry driver who was the cause of the accident. The Tribunal also took note of Ex.P4, final report filed by the Police in arriving at the said conclusion. An adverse inference was also drawn against the Insurance Company for not examining either the owner or the driver of the lorry.

5. On the quantum, the Tribunal found that the claimant had suffered a pelvic fracture apart from the Tranverce process fracture in L5 bone of the vertebra. Considering the effect of the injuries based on the discharge summaries, filed as Exs.P5 and P6, the Tribunal assessed the disability at 75%. The disability certificate filed as Ex.P9 and the X-ray marked as Ex.P8 were also considered by the Tribunal in arriving at the quantum of disability. The Tribunal found that the permanent disability caused by the injuries sustained by the claimant had resulted in diminution of his earing capacity. Considering the age and qualification of the injured, the Tribunal took his annual income at Rs.78,000/-, adopting the multiplier of '15', the Tribunal arrived at the total loss of future earnings at Rs.11,70,000/-. Since the Tribunal had concluded that the disability was to the tune of 75% the Tribunal awarded Rs.8,77,500/- towards loss of earning capacity. The Tribunal awarded a sum of Rs.1,00,000/- towards pain and suffering, Rs.75,000/- towards extra nourishment, Rs.50,000/- towards transport to hospital, Rs.3,000/- towards damage to clothing, Rs.30,000/- towards attender charges, Rs.25,000/- towards medical expenses, Rs.50,000/- towards future medical expenses, Rs.39,000/- towards loss of income for the treatment period and Rs.20,000/- towards loss of amenities. Thus the Tribunal arrived at a total compensation of Rs.12,69,500/-. Aggrieved, the Insurance Company is on appeal.

6. We have heard Mr.K.Moorthy, learned counsel appearing for the appellant and Mr.K.Varadha Kamaraj, learned counsel appearing for the 1st respondent/ claimant.

7. Though a valiant attempt was made by the learned counsel for the appellant to canvas the question of negligence, the lack of evidence on the part of the Insurance Company regarding the manner in which the accident happened, proves to be stumbling block to the attempt of the counsel. The Insurance Company has not examined any witnesses to prove that the accident occurred due to the negligence of the claimant or that the claimant had contributed to the accident.

The Insurance Company has not chosen to examine either the driver or the owner of the lorry. The Tribunal had taken note of the FIR, final report and the evidence of PW1, the claimant himself, and concluded that the entire negligence was on the part of the driver of the lorry. We do not see any reason to interfere with the conclusion of the Tribunal on the question of negligence.

8. On the quantum, the learned counsel would contend that the Tribunal had fixed the monthly income at Rs.6,500/- which is on the higher side. We find that the Tribunal has not added any amount towards future prospects. Therefore, we do not think that the fixation of Rs.6,500/- as monthly income can be said to be unreasonable. The compensation awarded under the other heads also appears to be reasonable, considering the nature of the injuries and the disability caused to the claimant.

9. We therefore see no reason to interfere with the award of the Tribunal and hence this appeal is dismissed. However, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

dsa

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
1.The IV Small Causes Court,
Chennai.

2.The Section Officer
VR Section,
High court, Madras

+1cc to M/s.K.Moorthy, Advocate Sr.No.61580
+1cc to M/s.K.Varadha Kamaraj, Advocate SR.No.60968

NRL(CO)
sm:9.10.2018