IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM:

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

CMA.No.2327 of 2018
and CMA No.17775 of 2018

M/s. Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem 636 004. ... Appellant/2nd Respondent

-vs

1. K.Raja ..Respondent/Petitioner

2. N.Viswanathan ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 02.03.2018 made in MCOP No.1396 of 2015, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr. S.Arun Kumar

J U D G M E N T

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

The insurance company which suffered an award for a sum of Rs.20,25,500/- as compensation for the injuries sustained by the claimant K.Raja in a motor accident that occurred on 03-01-2015 is the appellant.

2. According to the claimant the accident occurred while he was on the way to his house, walking towards the bus stop the lorry bearing registration number TN-28-AB 4459 driven in a rash and negligent manner by his driver hit against him and the left back wheel of the lorry ran over his legs resulting in severe crush injuries and the consequent amputation of both the legs. Terming the negligence on the part of the lorry driver as the cause of the accident, the claimant would seek a compensation of

Rs.50 lakhs.

3. The owner of the lorry who was arrayed as the first respondent remained ex-parte. The Insurance Company, as the insurer of the lorry, resisted the claim contending that the accident did not occur in the manner suggested by the claimant. It was the further case of the insurance company that the claimant crossed the road without taking proper care which resulted in his not seeing the lorry which was coming from behind. It was also contended that the lorry was driven at a slow speed. The insurance company would also deny the quantum of compensation claimed apart from denying the percentage of disability said to have been caused due to the accident.

4. The tribunal which heard the original petition on the appreciation of the evidence on record concluded that the accident occurred due to rash and negligent driving of the driver of the lorry. In coming to the said conclusion the tribunal relied upon the evidence of the claimant himself as PW-1 and the fact that an FIR was registered against the driver of the lorry in Crime No: 11/15 in Omalur police station.

5. On the quantum, the tribunal taking into account the fact that both the legs of the claimant were amputated above the knee concluded that the loss of earning capacity is 100%. The tribunal also concluded that the claimant apart from suffering loss of earning power was also was forced to spend a huge amount towards treatment. The tribunal took the monthly income of the injured claimant at Rs.6,500/- per month. Adding 25% towards future prospects and applying a multiplier of 14 the tribunal arrived at the loss of earning power at Rs.13,65,000/-. The tribunal also awarded a sum of Rs.2,00,000/- towards pain and suffering, Rs.2,00,000/- towards lots of amenities, Rs.2,00,000/- towards cost of artificial limb, Rs.10,000/- towards transportation, Rs.20,000/- towards extra nourishment, Rs.30,000/- towards attender charges and Rs.500/- towards damage to clothing. In all the tribunal awarded a sum of Rs.20,25,500/- as compensation.

6. Terming the award as excessive the insurance company has come forward with the above appeal.

7. We have heard Mr.S. Arunkumar learned counsel appearing for the appellant insurance company. Despite his best efforts.

8. Mr.S. Arunkumar is unable to point out as to how the award could be termed as excessive. The accident had occurred in the year 2015 and the claimant was an inpatient for over two months. The amputation of both the legs above the knee has not been denied. The tribunal has taken the monthly income of the claimant only at Rs.6,500/-. Even at a very conventional assessment the monthly income adopted by the tribunal, in our considered opinion, is below par. The effect of the amputation suffered on the claimant was an agricultural labourer would be undoubtedly 100% loss of earning power.

9. We are therefore of the considered opinion that the award of the tribunal does not require interference at our hands. In fine the appeal fails and the same is dismissed.

10. The Insurance Company is directed to deposit the award amount as per the award of the tribunal within a period of six weeks from the date of receipt of the copy of this judgment. On such deposit the claimant is permitted to withdraw the entire amount. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To
1.The Special Subordinate Judge No.2
The Motor Accidents Claims Tribunal,
Special Sub Court No.2,
Salem.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Arunkumar, Advocate sr 70725

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BR(CO)
SP(06/12/2018)