

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2562 of 2019

Gunasekaran

... Appellant

Vs

1.Dinesh
2.ICICI Lombard General Insurance Company Ltd.,
Chotabhai Centre, 2nd & 3rd Floor,
140, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600034.

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.84 of 2017 by the Subordinate Judge, Jayankondam (Ariyalur Principal District Court M.C.O.P.No.53 of 2017) dated 12.02.2019.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : Mrs.R.Srividhya for R2.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant aggrieved over the compensation of Rs.8,84,835/- for the disability sustained by him in the accident occurred on 15.12.2016, when the appellant, who was driving his motorcycle from Kumbakonam to Chennai main road from South to North direction, was hit by a car belonging to the 1st respondent insured with the 2nd respondent driven rash and negligently, causing injuries. As a result of the injuries sustained, the right leg of the appellant was amputated. Therefore, claim petition.

2. On contest, the tribunal found that the accident occurred because of the rash and negligent driving of the car and determined the disability at 80% and awarded a sum of Rs.8,84,835/-. Only on the quantum of compensation, the appellant is before this Court.

3. Heard Mr.S.Kaithamalai Kumaran, learned Counsel for the appellant and Mrs.R.Srividhya, learned Counsel for 2nd respondent.

4. There is no appeal by the Insurance company and therefore, the finding regarding negligence has reached finality.

5. Regarding the quantum of compensation, Mr.Kaithamalai Kumaran, learned Counsel for the appellant would submit that though the claimant proved his monthly salary at Rs.21,000/- per month through Ex.P.8 as he was working as driver of the transport corporation, the Tribunal determined the monthly income only at Rs.3,000/- on the ground that he was given an alternate job and he failed to join in it.

6. As rightly pointed out by Mr.Kaithamalai Kumaran, learned Counsel for the appellant, the claimant's right leg was amputated and therefore, he was unfit to be a driver. That being so, if he is offered to work as a mechanic, it is impossible for a person who lost his right leg to work as a mechanic and therefore, he rightly declined as he is incapable of working as a mechanic. Therefore, there is 100% loss of earning power, though 80% disability has been proved. 80% disability has caused loss of 100% earning power. Therefore, Rs.21,000/- as proved by Ex.P.8 is taken as monthly income.

7. The claimant is '46' years old as proved by Ex.P.7 Viz., passport and therefore, 30% is added towards future prospects as per "Pranay Sethi's" Judgment. By adding 30%, the monthly income would be $\text{Rs.21,000} + 30\% = \text{Rs.27,300/-}$. No multiplier was applied by the tribunal for calculating the loss of income. Therefore, the multiplier '13' is adopted as the age of the claimant is 46 years and thus, the loss of income would be $\text{Rs.27,300} \times 12 \times 13 = \text{Rs.42,58,800/-}$.

8. A sum of Rs.3,91,835/- awarded towards medical expenses as per Ex.P.3, Ex.P.4 & Ex.P.10 viz., medical bills, Rs.1,00,000/- awarded towards pain and sufferings, Rs.3,000/- awarded towards Damages to clothing and articles, Rs.50,000/- awarded towards Transportation, Attendant charges and extra nourishment and Rs.1,00,000/- awarded towards loss of amenities are all reasonable and the same are confirmed.

9.It has been specifically stated by the respondent in Paragraph No.9 of the counter affidavit that the appellant was not wearing helmet at the time of accident and did not possess licence. Section 129 of the Motor Vehicles Act mandates every two wheeler rider including the pillion rider to wear helmet compulsorily. The wearing of helmet has been made compulsory only to safeguard the lives of the two wheeler riders and consequently, to protect the interest of the family members of the two wheeler rider.

10.However, in our country, very unfortunately many are not wearing helmet by giving various excuses including sweating, causing inconvenience, unable to see the vehicles which are coming at the back and so on. When a statue mandates the two wheeler rider to wear helmet as per Section 129 of the Motor Vehicles Act, the same has to be worn. Wearing helmet is like possessing a licence to ride the two wheeler. This Court in the earlier Judgment in "National Insurance Co.Ltd. and others Vs.Thangadurai and ors." reported in "2018 (2) TNMAC 168 (DB)" deducted 20% towards contributory negligence for not possessing licence.

11.It has been proved before this Court that the two wheeler rider viz., the appellant was not possessing licence to ride the two wheeler and was not wearing helmet. The licence is a must to ride any vehicle. Section 3 of the Motor Vehicles Act makes it compulsory for the driver or rider of any motor vehicle to possess driving licence and therefore, 10% has to be deducted for not possessing license and 10% has to be deducted for not wearing helmet. Accordingly, 20% contributory negligence is fixed on the part of the appellant. Therefore, the sum of Rs.8,84,835/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	42,58,800/-
2.	Medical Expenses	3,91,835/-
3.	Pain and Sufferings	1,00,000/-
4.	Damages to clothing and articles	3,000/-
5.	Transportation, attendant charges and extra nourishment	50,000/-
6.	Loss of amenities	1,00,000/-
	Total	49,03,635/-

SI.No	Head	Amount (Rs.)
	After deduction of 20% contributory negligence, the compensation payable	39,22,908/-

12.Hence, the total compensation payable in this case is Rs. 39,22,908/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

13. The 2nd respondent/Insurance company is directed to deposit the entire award amount as per the order of this Court before the tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the amount through RTGS within a period of one week. Additional Court fee, if any, has to be paid by appellant within a period of two weeks from the date of receipt of a copy of this order.

14. Accordingly, the appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Jayankondam.

+1cc to M/s.Sree Vidhya, Advocate Sr.64749
+1cc to Mr.Kaithamalai Kumaran, Advocate Sr.63913

C.M.A.No.2562 of 2019

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