IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2756 of 2019
and CMP.No. 14015 of 2019

Reliance General Insurance Co.Ltd.
10/4/4, II Floor, Thaha Plaza,
South Bye Pass Road, Wannarpet,
Tirunelveli ..Appellant/3rd Respondent

Vs.

1. P.Ramasamy ..1st Respondent/Petitioner
2. A. Kannan
3. S. Murugan ..Respondents 2 & 3/1st & 2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of MV Act against the Judgment and decree dated 24.09.2018 passed in MCOP. No. 1595 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur.

For Appellant : M/s.C. Bhuvanasundari

For Respondents : M/s. Myilsamy - R1
R2 & R3 - Exparte

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree dated 24.09.2018 passed in MCOP. No. 1595 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur.

2. Brief facts leading to the claim application are as follows;

2.1 On 24.04.2016 at about 8.15 PM the claimant was riding bicycle at Nochipalayam Pirivu, near LNT Water Tank from West to East direction by much observing traffic rules and regulations. At that time, the 1st respondent drove the container lorry bearing reg.no. TN-69-AA-7688 in the above said road from North to South direction with rash and negligent manner and without observing any traffic rules and regulations, dashed against the claimant and caused the accident.

2.2 The Insurance Company in the counter statement had denied the mode of the accident as narrated by the claimant in the claim petition and further denied the negligence on the part of the driver of the Lorry bearing Reg.No.TN69 AA 7688. The age, health and occupation of the petitioner aged about 61 years as Securiy in Lucky Processing and monthly income of Rs,15,000/- per moth are totally denied and it is for the petitioner to prove the same by documentary evidence. The claimed at Rs.30,00,000/- as compensation under various heads is excessive and baseless.

2.3 The tribunal after analysing evidence and documents has concluded that the accident had occurred only due to the rash and negligent driving on the part of the driver of the Lorry and awarded a sum of Rs. 12,15,981/- as compensation. Since the said lorry is insured with the 3rd respondent/Insurance Company, the tribunal has fixed the liability on the Insurance compnay and directed to pay the said compensaton. Aggreived against the said compensation and liability, the Insurance Company has preferred this appeal.

3. In the grounds of appeal, it is contended by the appellant/insurance company is that the sum awarded by the tribunal as compensation at Rs,12,00,000/- with interest at 7.5% per annum is totally unjustified and not in consance with the facts and circumstances of the case and evidence placed on record. Further contended that negligence fixed on the driver of the lorry is without considering the manner of occurence and further stated that the tribunal failed to note that the claim of the petitioner of the lorry being driven in a rash and negligent manner is speculative and inherently false since it was a junction; the accident happened only because he was not watching vehicular movement and proceeded without caution. The Appellant/Insurance Company has further contended the compensation awarded by the tribunal under various heads are high excessive.

4. Heard both sides and perused the documents available on record.

5. On perusal of records, it is seen that the claimant sustained injuries due to the accident that occurred on 24.04.2016 based on the evidence and records, PW1 eyewitness and the claimant. A criminal case was also registered against the driver of the of the offending vehicle as per Ex.P1-FIR. The finding of the tribunal is that due to the negligence driving, the said accident had occurred and hence the driver is responsible for the said accident. While determining the compensation, the tribunal by the considering the evidence of PW1, who had deposed in his cross examination that at the time of the accident he was working as Security and earning Rs.15,000/- per month. He has further deposed that because of the said injuries, he sustained greivious injuries which very much affected his occupation as Security. Hence he claimed to

fix Rs.15,000/- as his income while determining the compensation. Another witness PW2 was also examined. On the side of claimant Ex.P1 to P10 were marked. Doctor who treated the claimant was examined as PW3 and through him Ex.P11 to 12 were marked.

6. It is deposed by the claimant that immediately after the accident i.e on 24.04.2016, he was admitted in the Tiruppur Government Hospital and further he was admitted in Deepa Hospital as inpatient for 40 days. The tribunal on considering the disability certificate given by the doctor PW2 in detail mentioning the nature of injuries and fracture injuries on his left hand elbow and other parts has given disability at 70% percent. But the tribunal by taking into considering the jugment of this Court submitted by the learned counsel for the claimant, has fixed the 100% disability and by taking Rs.9000/- as monthly income, calculated the loss of income at Rs.8,31,600/-

7. Here also the injuries sustained by the claimant are very much aggireived by the appelllant/insurance company by contending that in the absence of any proof for occupation and also the absence of income, only based on the evidence of PW2, the assessment was made by the tribunal. Further it is stated that the claimant was working as Security and there is no functional disability as determined by the tribunal and therefore, fixing disability at 100% is purely excessive and without any basis.

8. On the other hand the respondent/claimant contended that he was working as security and because of the injuries sustained by him the disability was very much observed by PW2 by way of examination and observed that he is totally incapable of doing any work especially his occupation as security and he is not in a position to continue his profession and incurred huge loss of income and hence he being the breadwinner of the family, his family members incurred huge loss of income and mental agony. Therefore the sum awarded by the for loss of earning by adopting multiplier method is reasonable.

9. In view of the deposition of the claimant, who had deposed that he is 61 years old and working as security, the tribunal ought not have awarded any future prospects for the injured person as per the rulings of Apex Court in the case of National Insurance Company Vs. Pranay Sethi. Further, by considering the nature of injuries and the disability sustained by the claimant, this Court is of the opinion that fixing of 55% disability and Rs.3000/- per percentage would be proper and reasonable. Accordingly, this Court modifies the sum awarded under the head 'Disability' by fixing 55 % disability and taking Rs.3000/- per percentage, which would be Rs.1,65,000/- (3000 x 55). Further by taking into consideration the treatment period undergone by the

claimant's, it would be appropriate to grant amount for loss of income for 3 months. Hence by taking Rs.6500/- per month, the loss of income for months is arrived at Rs. 19,500/- (6500 x 3). With regard to the sum granted by the tribunal under the heads Loss of amenities and Metnal agony, it is seen from the records that the respondent /claimant has undergone treatment only for the period from 24.04.2016 to 17.05.2016, hence, it can be presumed that there could not be any loss of amenities and future loss of income as claimed by the respondent/claimant. Therefore, the sum awarded by the tribunal under the head 'Loss of amenities' and 'Mental Agony' is set aside and the sum awarded under the other heads Attender charges, Nutrition, Transport and Medical Expenses are confirmed.

Accordingly, the compensation awarded by the tribunal is modified by this Court as below;

Head	Sum awarded by the tribunal	Sum modified by this Court
Disability	8,31,600	1,65,000 (3000 x 55)
Pain and Suffering	25,000	25,000
Loss of amenities	25,000	---
Mental Agony	25,000	---
Attender Charges	25,000	25,000
Nutrition	20,000	20,000
Transport	15,000	15,000
Medical Bills	2,49,381	2,49,381
Loss of income for 3 months	--	19,500 (6500 x 3)
Total	12,15,981/- Rounded off to 12,00,000/-	5,18,881/-

Thus the claimants are entitled to only a sum of Rs. 5,18,881 /- alongwith interest at 7.5% per annum.

10. In the result;

(i). The Civil Miscellaneous is partly allowed. No costs. Consequently, connected Miscellaneous Petition if any, is closed.

(iii)The appellant/ Insurance Company is directed to deposit the entire amount, modified by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum and the apportionment are unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Princpal Sub Judge,
   The Motor Accidents Claims Tribunal,
   Tiruppur.

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

+1cc to Mr.C. Bhuvanasundari, Advocate SR.No.60117

+1cc to Mr.Myilsamy, Advocate SR.No.60173

C.M.A.No. 2756 of 2019
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AD(CO)
GMY(02/01/2020)