IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2903 of 2019

The Manager,
M/s.Reliance General Insurance Co. Ltd.,
No.6, 6th Floor, Reliance House,
Haddows Road, Nungambakkam,
Chennai – 600 006. ... Appellant

vs.

1.M.Tamilselvi
2.Jayaprakash ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2019 made in M.C.O.P.No.149 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi.

For Appellant : Mr.S.Arunkumar

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

The instant appeal has been filed by the Insurance Company challenging the Judgment and decree dated 10.01.2019 passed by the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi in MCOP.No. 149 of 2014.

Brief facts leading to the filing of the instant appeal:

2. A lorry bearing registration No.TN70-D-8632 which was owned by the second respondent and insured with the Appellant collided with a car bearing registration No.TN07-AY-5799 on 01.09.2014 causing grievous injuries to the first respondent who was travelling in the car along with her mother and father and proceeding in the Ambur – Vaniyambadi direction. The first respondent preferred a motor accident claim before the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi in

MCOP.No. 149 of 2014 for the injuries sustained by her as a result of an accident caused by the lorry which was owned by the second respondent and insured with the Appellant. The injuries sustained by the first respondent included the right forearm fracture, D11-D12 Flexion Distraction Injury, D12 L1 Complete Paraplegia Fracture and injuries all over the body.

3.By an award dated 10.01.2019 in MCOP.No.149 of 2014, the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi after giving a finding that the accident happened only due to the rash and negligent driving by the driver of the lorry bearing registration No.TN70-D-8632, directed the Appellant-Insurance Company to pay compensation to the first respondent as detailed below:

Sl.No.	Heads	Award Amount (Rs.)
1	Loss of earning power	12,60,000/-
2	Pain and suffering	1,00,000/-
3	Loss of amenities	1,00,000/-
4	Attender charges	3,00,000/-
5	Medical expenses	6,56,067/-
6	Extra nourishment	25,000/-
	Total	24,41,067/-
	Rounded off	24,40,000/-

4.Aggrieved by the award dated 10.01.2019 passed by the Motor Accident Claims Tribunal, Subordinate Judge, Vaniyambadi in MCOP.No. 149 of 2014, the insurance company which has insured the lorry has filed this instant appeal

5.Heard Mr.S.Arun Kumar, learned counsel appearing for the Appellant-Insurance Company.

Discussion:

6.The impugned award is challenged by the Appellant on the ground that the Tribunal has awarded excessive compensation to the first respondent. According to the Appellant, the first respondent has not sustained 100% permanent disability or loss of earning power and the Tribunal erred in awarding Rs.3,00,000/- towards Attender Charges, Rs.1,00,000/- towards loss of Amenities, Rs.6,56,067/- towards Medical Expenses without any basis for the same.

7.This Court has perused and examined the impugned award and the materials available on record.

8.Before the Tribunal, the first respondent has filed 15 documents which were marked as Ex.P1 to Ex.P15 and two witnesses viz., PW1 - the first respondent herself and PW2 - an eye-witness. On the side of the Appellant, no witnesses or documentary evidence was produced before the Tribunal.

9.Ex.P1 is the FIR which clearly indicates that only due to the rash and negligent driving by the driver of the lorry, the accident had happened which resulted in the injuries sustained by the first respondent. No contra evidence has been produced by the Appellant to disprove the same. The Tribunal has rightly given a finding that only due to the rash and negligent driving by the driver of the lorry, the accident had happened which resulted in the grievous injuries sustained by the first respondent. Further, in the instant appeal the Appellant insurance company has not challenged the finding regarding negligence and hence the said finding has now attained finality. The instant appeal has also been filed only questioning the quantum of compensation awarded by the tribunal and has not challenged the finding of the negligence on the part of the insured vehicle.

10.Apart from other documents, the first respondent has also filed wound certificate, copy of discharge summary given by CMC hospital, discharge summary given by the MIOT hospital, medical bills, pharmacy bills, X-ray and other bills which will clearly indicate that the injuries sustained by the first respondent were grievous in nature and the nature of injuries indicated in the claim petition as well as in the oral evidence is true.

11.Insofar as the quantum of compensation awarded by the Tribunal is concerned, we are of the considered view that it is a just compensation. At the time of the accident, the first respondent was aged 37 years and was a tailor. Even though she had claimed in her claim petition that she was earning a monthly income of Rs.15,000/-, the Tribunal has assessed the monthly income of the first respondent only at Rs.7,000/- for an accident which happened on 01.09.2014. In our considered view, the assessment of monthly notional income of the first respondent is reasonable and cannot be held to be excessive.

12.The medical expenses incurred by the first respondent on account of grievous injuries sustained by her has been proved through the medical bills filed before the Tribunal which have been marked as exhibits. The injuries sustained by the first respondent are right forearm fracture, D11-D12 Flexion Distraction Injury, D12 L1 Complete Paraplegia Fracture and injuries all over her body which is also confirmed by the court document, namely the medical certificate from the Medical Board which was marked as Ex.C1.

13.The Tribunal has considered the pleadings, oral and documentary evidence available on record and only thereafter, has passed the impugned award. We are of the considered view that the compensation awarded by the tribunal is a just compensation and therefore, there is no infirmity in the impugned award. The grounds raised in this appeal are summarily rejected in the Admission stage itself.

Conclusion:

14.In the result, the appeal is dismissed and the Appellant-Insurance Company is directed to deposit the entire award amount as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.149 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount through RTGS within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Vaniyambadi.

+1cc to Mr.S.Arunkumar, Advocate SR.No.76990

C.M.A.No.2903 of 2019

GP(CO)
GMY(14/08/2020)