

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3004 of 2018
and

C.M.P.No.22780 of 2018

M/s.Reliance General Insurance
Company Limited,
3rd Floor, 408,
Perundurai Road,
Erode.

.. Appellant

Vs.

1.Sengottuvelu

2.Kamalasekaran

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.03.2018 made in M.C.O.P.No.645 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.E.Rajadurai for
M/s.M.B.Gopalan Associates

For RR1 : Mr.T.S.Arthanareeswaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 07.03.2018 made in M.C.O.P.No.645 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

2.Mr.T.Arthanareeswaran, learned counsel takes notice for first respondent.

3.By consent of both parties, this Civil Miscellaneous Appeal is taken up for final hearing, at the admission stage itself.

4.The appellant-Insurance Company is the second respondent in M.C.O.P.No.645 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri. The first respondent filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.08.2011.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the second respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.9,20,000/- as compensation to the first respondent/claimant.

6.Against the said award dated 07.03.2018 made in M.C.O.P.No.645 of 2011, the appellant-Insurance Company has come out with the present appeal for setting aside the award passed by the Tribunal.

7.The learned counsel appearing for the appellant submitted that the accident occurred only due to rash and negligent driving by the first respondent/claimant. F.I.R. was registered only against the first respondent herein. The police, who investigated the matter was examined as R.W.1 and filed final report, wherein it is mentioned that the first respondent alone is responsible for the accident. The Tribunal without properly appreciating the evidence of R.W.1, rough sketch and F.I.R, erroneously accepted the interested witness of P.W.3 and held that the second respondent is responsible for the accident. The Tribunal is not correct in applying multiplier method for awarding compensation towards 40% of disability as certified by P.W.2/doctor which is excessive and it relates to only part of the body. The amounts awarded by the tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

8.Per contra, the learned counsel appearing for the first respondent/claimant contended that after the accident, the first respondent was unconscious and he was immediately taken to hospital. Taking advantage of the same, a false complaint was lodged against the first respondent and F.I.R was registered against him. The evidence of P.W.1, rough sketch and evidence of P.W.3 proved that accident occurred only due to rash and

negligent driving by the second respondent. The first respondent/claimant suffered functional disability. The amounts awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant as well as the first respondent and perused all the materials available on record.

10. From the material on the record, it is seen that P.W.3 is not an interested witness as alleged by the learned counsel for the appellant. P.W.3 is an independent witness. Further, evidence of R.W.1, F.I.R and rough sketch marked through R.W.1 does not support the case of the appellant. The second respondent who lodged the complaint, remained ex-parte and did not give evidence to substantiate his case that the first respondent while over taking lorry, came and dashed against him. The Tribunal has elaborately considered the above facts and held that accident occurred only due to rash and negligent driving by the second respondent by giving cogent and valid reason. There is no error in the said finding of the Tribunal, warranting interference by this Court.

11. As far as the quantum of compensation is concerned, P.W.2/ Doctor was examined by the first respondent, who has stated that the first respondent suffered 25% disability due to the injuries sustained by him in his left forearm and 15% on his head. The Tribunal accepting the evidence of P.W.2, held that the first respondent has suffered functional disability and awarded compensation by applying multiplier method for 40% disability. The Tribunal failed to see that P.W.2/Doctor has certified disability for left fore arm and injuries in the head. P.W.2/Doctor did not certify the percentage of disability for the whole body. It is now well settled that disability certified by P.W.2/Doctor for parts of the body cannot be taken as disability for whole body. In view of the same, considering the nature of injuries sustained by the first respondent and the percentage of disability for two parts of the body, percentage of disability for whole body is fixed at 25% and compensation for loss of earning capacity is calculated as follows:

$$\text{Rs. } 9,000 \times 12 \times 17 \times 25/100 = \text{Rs. } 4,59,000/-$$

The Tribunal in addition to awarding compensation towards loss of earning capacity, awarded a sum of Rs.25,000/- towards simple injuries. The Tribunal having held that the first respondent suffered functional disability and awarded compensation by applying multiplier method, erred in awarding further sum of Rs.25,000/- towards simple injuries. The same is

liable to be set aside and is hereby set aside. The amounts awarded by the Tribunal under all other heads are confirmed. Thus, the compensation awarded by the Tribunal is reduced as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning Capacity	7,35,000/-	4,59,000/-	reduced
2.	Medical Bills	35,000/-	35,000/-	confirmed
3.	Pain and Suffering	50,000/-	50,000/-	confirmed
4.	Transportation	10,000/-	10,000/-	confirmed
5.	Extra Nourishment	25,000/-	25,000/-	confirmed
6.	Attendant Charges	10,000/-	10,000/-	confirmed
7.	Future Medical Expenses	25,000/-	25,000/-	confirmed
8.	Simple Injuries	25,000/-	-	set aside
9.	Loss of Property	5,000/-	5,000/-	confirmed
	Total	Rs.9,20,000/-	Rs.6,19,000/-	reduced by Rs.3,01,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,20,000/- is hereby reduced to Rs.6,19,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the modified award

amount along with interest and cost, less the amount if any, already withdrawn. The appellant-Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit along with accrued interest. No costs. Consequently, the connected Miscellaneous Petition is closed.

krk/vkr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankagiri.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.Gopalan Associates, Advocate, Sr.No.1598.

C.M.A.No.3004 of 2018
and
C.M.P.No.3844 of 2018

Kak (03/04/2019)

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