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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.254 of 2021
and C.M.P.No.1654 of 2021

Reliance General Ins. Co. Ltd.,
Third Floor, Perundurai Salai,
Erode.

...Appellant / 2nd Respondent

Vs.

1.Veerapandian

...1st Respondent / Claimant

2.Boopalan

...2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2020, made in M.C.O.P. No.252 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri.

For Appellant : Mrs.C.Bhuvanasundari

For Respondents : Mr.C.Kulanthaivel (For R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company challenging the quantum of compensation granted by the Tribunal in award dated 07.07.2020, made in M.C.O.P. No.252 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.252 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.03.2013.

3.According to the 1st respondent, on the date of accident, he was riding as a pillion rider in a Motorcycle bearing Registration No.TN-52-Z-7614 belonging to the 2nd respondent, with his friend one Mukilan in the extreme left side of the Sankari to Tiruchengode Main road. While nearing Moodikkadu



Arunthathiyar Street, Sankari Taluk, Salem District, the rider of the Motorcycle drove the same in a rash and negligent manner, ran over on a stone, lost his control and fell down with the bike and caused the accident. The accident occurred only due to rash and negligent riding by rider of the Motorcycle belonging to the 2nd respondent. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner and appellant as insurer of the said vehicle.

4.The 2nd respondent, owner of the Motorcycle, remained exparte before the Tribunal.

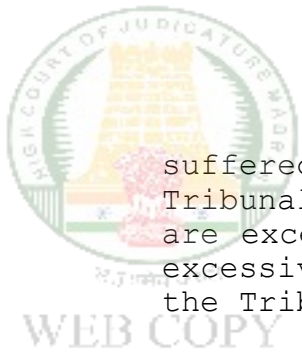
5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred only due to the incompetence of the rider of the Motorcycle to ride the same. The Police has closed the criminal case as Mistake of Facts. The 1st respondent gave a false complaint as if the rider of the 1st respondent's Motorcycle rode the same in a rash and negligent manner. The 1st respondent has to prove that the rider of the Motorcycle possessed valid driving license to ply the vehicle and vehicle had valid RC, Permit and FC at the time of accident. In any event, the 1st respondent also has to prove the age, avocation and income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 13 documents as Exs.P1 to P13. The appellant did not let in any oral and documentary evidence. The disability certificate of the 1st respondent was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 2nd respondent and directed the appellant as well as the 2nd respondent to jointly and severally pay a sum of Rs.6,60,000/- as compensation to the 1st respondent.

8.Questioning the quantum of compensation granted by the Tribunal in the award dated 07.07.2020, made in M.C.O.P. No.252 of 2014, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that in the absence of any evidence by the 1st respondent to prove his avocation and income, the Tribunal erroneously fixed a sum of Rs.10,000/- per month as notional income. The Tribunal ought to have considered the 5% disability assessed by the Medical Board, which shows that the injuries



suffered are simple in nature. The amounts awarded by the Tribunal towards pain and suffering and future medical expenses are excessive. The total compensation granted by the Tribunal is excessive and prayed for reducing the compensation awarded by the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a Lorry Driver and was earning a sum of Rs.15,000/- per month. The Tribunal considering the evidence of 1st respondent as P.W.1, fixed the monthly income as Rs.10,000/- and granted compensation. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court and prayed for dismissal of the appeal.

11. Heard through video conference the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12. It is the case of the 1st respondent that in the accident, he suffered grievous injuries and fracture and has taken treatment at the Trust Hospital, Erode in two different spells viz., from 29.03.2013 to 30.04.2013 and from 16.12.2013 to 22.12.2013. He was referred to the Medical Board. The Medical Board examined the 1st respondent and certified that he suffered 5% disability. The Tribunal failed to award any amount towards disability. The accident is of the year 2013. Considering the nature of injuries and percentage of disability assessed by the Medical Board, the 1st respondent is entitled to a sum of Rs.15,000/- [Rs.3,000/- x 15%] towards disability, at the rate of Rs.3,000/- per percentage for 5% disability. At the time of accident, the 1st respondent was working as a Lorry Driver and was earning a sum of Rs.15,000/- per month. He failed to prove the same. In the absence of any materials, the Tribunal fixed the notional income of the 1st respondent as Rs.10,000/- per month. Considering the year of accident, the monthly income fixed by the Tribunal is not excessive. The Tribunal considering the period of treatment taken by the 1st respondent, granted a sum of Rs.1,00,000/- towards loss of income for 10 months. The same is in order. Considering the period of treatment taken by the 1st respondent, as evidenced by the discharge summaries marked as Exs.P3 and P4, the sum of Rs.1,00,000/- granted by the Tribunal for loss of income is not interfered with. The 1st respondent has claimed a sum of Rs.7,00,000/- towards medical expenses. He has produced Ex.P9 - medical bill for Rs.3,43,656/-. The Tribunal excessively granted a sum of Rs.3,60,000/- towards medical expenses. The 1st respondent is entitled to only Rs.3,43,656/- towards medical expenses and the same is rounded off to Rs.3,43,000/-. From the materials on record, it is seen that the 1st respondent has not produced any



documents or not examined any Doctor to prove that he requires continuous treatment. In the absence of any materials, the Tribunal erred in granting a sum of Rs.1,00,000/- for continuous treatment, which is not proper and the same is liable to be set aside and is hereby set aside. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	3,60,000/-	3,43,000/-	Reduced
2.	Loss of income	1,00,000/-	1,00,000/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	20,000/-	20,000/-	Confirmed
5.	Attendant charges	15,000/-	15,000/-	Confirmed
6.	Pain and sufferings	50,000/-	50,000/-	Confirmed
7.	Continuous treatment	1,00,000/-	-	Set aside
8.	Damage to clothes	5,000/-	5,000/-	Confirmed
	Total	6,60,000/-	5,43,000/-	Reduced by Rs.1,17,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,60,000/- is modified to Rs.5,43,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company as well as the 2nd respondent are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.252 of 2014. On such deposit, the 1st respondent is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company as well as the 2nd respondent are permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.252 of 2014, if any already deposited by them. It is made clear that if the 1st respondent has already withdrawn the award amount, the appellant-Insurance Company as well as the 2nd



respondent are not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankagiri.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.8759

C.M.A. No.254 of 2021

SSI (CO)

RVM(23/08/2021)