



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1142 of 2021

and

C.M.P.No.5823 of 2021

Manager,
M/s.Iffco-Tokio General Insurance Company Limited,
Lanson Toyota,
34, Poonamallee High Road,
Koyambedu,
Chennai - 600 107.

..Appellant/2nd Respondent

Vs.

1.Devaraj

..Respondent/Petitioner

2.Alexander

..Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24.01.2020 made in M.C.O.P. No.717 of 2018, on the file of the Special Sub Court (Motor Accidents Claims Tribunal), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed by the appellant-Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 24.01.2020 made in M.C.O.P. No.717 of 2018, on the file of the Special Sub Court (Motor Accidents Claims Tribunal), at Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No.717 of 2018, on the file of the Special Sub Court (Motor Accidents Claims Tribunal), at Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/-



as compensation for the injuries sustained by him in the accident that took place on 30.03.2016.

3. According to the 1st respondent, on the date of accident, when he was riding his Cycle Rickshaw to load grill, slowly and cautiously, following the rules of the road, in the extreme left side of the Krishnagiri to Chennai road, near Dhandekuppam Junction Service Road, the driver of the Car bearing Registration No. TN-04-AP-5810 owned by the 2nd respondent drove the same from Thiruvannamalai Junction road in a rash and negligent manner at high speed, lost control and dashed against the Cycle Rickshaw driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries. The accident has occurred only due to rash and negligent driving by driver of the Car. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner and appellant as insurer of the said vehicle respectively.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Car owned by the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.4,27,778/- as compensation to the 1st respondent.

5. Questioning the quantum of compensation granted by the Tribunal in the award dated 24.01.2020 made in M.C.O.P. No.717 of 2018, the appellant - Insurance Company has come out with the present appeal.

6. The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent was treated only conservatively for four days in the Hospital. After discharge from the Hospital, he has not taken any continuous treatment. The Medical Board examined the 1st respondent after three months of the accident. The disability certificate issued by the Medical Board is without any basis. The Medical Board itself issued disability certificate in a perfunctory manner with contents scribbled. The disability certificate does not contain the details of name, designation of the members of the Medical Board and their specialization. The Tribunal instead of converting the disability to the whole body, erroneously fixed 25% as functional disability and granted excessive amounts as compensation towards loss of earning capacity. The total compensation awarded by the Tribunal is also excessive and prayed for setting aside the award of the Tribunal.

7. Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.



8. It is the case of the 1st respondent that he was earning a sum of Rs.15,000/- per month using his Cycle Rickshaw. On the date of accident, while he was carrying grill in his Cycle Rickshaw, the driver of the Car owned by the 2nd respondent dashed on the Cycle Rickshaw and caused the accident. In the accident he suffered injuries in his right thigh, leg and has taken treatment as in-patient at Padma Poly Clinic from 30.03.2016 to 02.04.2016. According to the 1st respondent, due to the injuries sustained in the accident, he could not continue his personal work and unable to pull the Cycle Rickshaw. In order to prove his case, he examined himself as P.W.1 and filed Accident Register, Discharge Summary and medical bills and marked the same as Exs.P2, P3 and P9 respectively. The 1st respondent was referred to the Medical Board. The Medical Board examined the 1st respondent and certified that the 1st respondent suffered 40% disability, which was marked as Ex.C1. The learned counsel appearing for the appellant contended that the disability certificate issued by the Medical Board is without any basis. The appellant has not examined any Doctor to prove their contention that the disability certificate issued by the Medical Board is excessive. In the absence of any contra evidence, the Tribunal accepted the disability certificate, Ex.C1. The Tribunal observed the 1st respondent when he came to the Court to give evidence and found that the 1st respondent was limping and finding it difficult to walk. The Tribunal considering the nature of injuries, nature of work done by the 1st respondent and contention of the 1st respondent, held that he suffered 25% reduction in earning capacity and fixed 25% as functional disability and adopted multiplier method for awarding compensation. The 1st respondent contended that he was earning a sum of Rs.15,000/- per month by his Cycle Rickshaw. He has not filed any document to prove the avocation and income. In the absence of any materials, the Tribunal fixed a sum of Rs.9,350/-, including future prospects as notional income of the 1st respondent. The accident is of the year 2016. The notional income fixed by the Tribunal is not excessive. The reason given by the Tribunal for fixing 25% as functional disability and adopting multiplier method is proper. The 1st respondent has taken in-patient treatment in the Hospital. The amounts granted by the Tribunal under different heads are not excessive, warranting interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and amount awarded by the Tribunal at Rs.4,27,778/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount, 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.717 of 2018. On such deposit, the 1st



respondent is permitted to withdraw the award amount, determined by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge,
(Motor Accidents Claims Tribunal),
Krishnagiri.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.20498

C.M.A.No.1142 of 2021
and
C.M.P.No.5823 of 2021

RLD(CO)
RGA(28/10/2021)