



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3229 of 2021
and
C.M.P.No.18421 of 2021

The Branch Manager,
Reliance General Insurance Company Limited,
Branch Office, II nd Floor,
Global Plaza Road, Opp.New Railway Platform,
Vanchikulam Road Post,
Poothole, Thrissur and Kerala State. ... Appellant/Respondent

Vs.

1.Soundhra Pandian ...Respondent/Petitioner

2.Disha Bhatija ... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 13.03.2020 made in M.C.O.P.No.821 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge (MACT), Dharmapuri.

For Appellant :Mrs.Elveera Antionette Ravindran

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This Civil Miscellaneous Appeal arises out of the order passed by the Motor Accident Claims Tribunal cum Special Sub Ordinate Court, Dharmapuri in M.C.O.P.No.821 of 2015, dated 13.03.2020.

2.For the sake of convenience, parties are referred to as per their ranking in the claim petition.



3. The claimant suffered injury in the accident that had taken place on 22.01.2013. When he was riding in a Gas Tanker Lorry bearing Registration No.KA 19 AA 2233 on the Alathur to Thippallur NH Road near Alathur, a bus bearing Registration No.KA 51 A 7200 came in the opposite side, in a rash and negligent manner dashed against the lorry driven by the claimant. Due to the accident, the claimant sustained grievous injuries and immediately he was admitted in hospital. During the course of treatment, he was admitted in various hospitals as an in-patient. Hence, the claimant laid a claim petition claiming a sum of Rs.30,00,000/- as compensation

4. The Insurance Company filed a Counter statement denying the manner of accident as projected by the claimant, age, avocation and income of the claimant and its liability to pay the compensation.

5. To substantiate the case on the side of the claimants, PW1 and PW2 were examined and Exs.P1 to P16 were marked. On the side of the Insurance Company, neither any oral evidence was adduced, nor any document was marked.

6. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the 1st respondent vehicle, bearing Registration No.KA 51 A 7200. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.26,75,739/- and directed the second respondent/Insurance Company to pay the above compensation with interest @ 7.5% p.a., from the date of petition to till date of deposit with proportionate cost within a period of two months. Assailing the award, the appellant/Insurance Company has filed the present appeal.

7.Heard the learned counsels appearing for the parties and perused the materials available on record.

8.This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

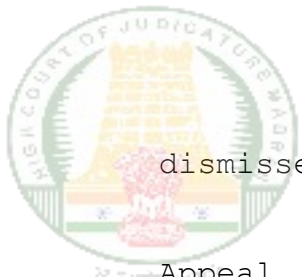
9.It is the submission of the learned counsel for the appellant / Insurance Company that the Tribunal awarded an exorbitant amount of Rs.26,75,739/- as compensation without any valid proof and has contended that the award is on the higher side by wrongly fixing monthly income of the claimant as Rs.12,000/- and erred in awarding Rs.22,03,200/- as loss of



future earnings. He would further contend that the Tribunal erred in awarding Rs.2,41,539/- towards medical bills incurred and Rs.30,000/- for cost of the attender. The learned counsel would further contend that the Tribunal has granted a sum of Rs.50,000/- for pain and suffering, as well as Rs.50,000/- for extra nourishment, which are highly excessive and unreasonable. Hence, he seeks reduction of the award amount.

10. It is the contention of the learned counsel for the claimant that the claimant was 25 years old at the time of the accident and he was working as a driver in Gas Tanker Lorry and earning Rs.30,000/- per month. Hence, the Tribunal ought to have fixed Rs.30,000/- as monthly income of the claimant. However, the Tribunal, without considering the same and also not taken into account the year of the accident, i.e., 2013, fixed a meager sum of Rs.12,000/- as his monthly income and made calculation on that basis and arrived at a sum of Rs.22,03,200/- under the head Loss of future earnings. Further, the amounts awarded by the Tribunal under other conventional heads are also very meagre, which needs proper enhancement.

11. Perusal of records reveal that the claimant was 25 years at the time of the accident and he was as a driver in Gas Tanker Lorry. Though the claimant has alleged that he was earning Rs.30,000/- per month, he has not produced any document to prove the same. Hence, the Tribunal fixed the notional monthly income of the deceased at Rs.12,000/- as per the prevailing price index of the year. Considering the avocation of the injured claimant and the cost of living prevalent at the time of the accident, this Court is of the view that the sum of Rs.12,000/- fixed as monthly income by the Tribunal is just and fair. Thereafter, the Tribunal arrived at a sum of Rs.25,92,000/- $[12,000 \times 12 \times 18]$ under the head Loss of earning capacity, by applying multiplier 18. Ex.P.10 reveals that the claimant was suffered with 85 % of disability, hence, a sum of Rs.22,03,200/- is awarded under the head Loss of earning capacity. That apart, the Tribunal awarded Rs.2,41,539/- towards medical expenses; Rs.50,000/- towards pain and suffering; Rs.75,000/- towards loss of amenities; Rs.50,000/- towards Cost of nourishment; Rs.25,000/- towards Transport expenses; Rs.30,000/- towards cost of the attender and finally, Rs.1,000/- as loss of clothing on accident. In total, the Tribunal has awarded a sum of Rs.26,75,739/- along with interest at the rate of 7.5% per annum. In our considered opinion, the amount awarded by the Tribunal is fair and reasonable and does not warrant any interference by us. Hence, the award of the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal fails and the same is liable to be



dismissed.

12. In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
The Motor Accident Claims Tribunal
Dharmapuri.

Copy to:
The Section Officer
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mrs. Elveera Ravindran, Advocate SR.No.59343

C.M.A.No.3229 of 2021
and
C.M.P.No.18421 of 2021

JPL(CO)
CB(28/03/2022)