



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.M.A. (MD)No.273 of 2020
and CMP. (MD)No.3725 of 2021

Branch Manager
M/S Reliance General Insurance Company,
First Floor, 80 Feet Road,
Anna Nagar, Madurai District. ... Appellant / Respondent No.2

Vs.

1.M.Raja ... Respondent No.1 / Petitioner
2.V.Kumaravel ... Respondent / Respondent No.1

PRAYER: This Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 02.07.2019 passed in MCOP.No.223 of 2016 on the file of the Special Subordinate Judge (Motor Accidents Claims Tribunal), Madurai by allowing this appeal.

For appellant : Mr.V.Sakthivel

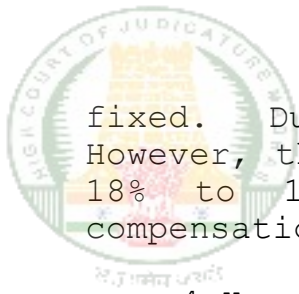
For R1 : Mr.K.Kumaravel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 02.07.2019 passed in MCOP.No.223 of 2016 on the file of the Special Subordinate Judge (Motor Accidents Claims Tribunal), Madurai.

2.The learned counsel for the appellant would state that the first respondent/claimant ought to have wore helmet at the time of accident as mandated under Section 128 of the Motor Vehicles Act, as such, he has also contributed to the accident and therefore, the Tribunal ought to have fixed 15% negligence on the first respondent/claimant. He would further state that though the first respondent/claimant sustained only 18% disability, the Tribunal has erroneously adopted multiplier method for computing the loss of income. Thus, he would pray for allowing the appeal.

3.The learned counsel for the first respondent/claimant would state that in the accident, the first respondent/claimant sustained head injuries and due to the grievous injuries in the left leg, the left knee of the claimant was replaced and artificial knee was



fixed. Due to the same, the claimant lost his earning capacity. However, the Tribunal has reduced the percentage of disability from 18% to 15% and applying multiplier method, it has awarded compensation which does not require interference of this Court.

4. Heard the learned counsel for the appellant and R1.

5. Perusal of record shows that at the time of accident the first respondent/claimant was working as a Manager in South India Best Control and earned Rs.54,000/- per month. The Tribunal relying upon Ex.P.11/salary certificate, fixed the monthly income of the claimant at Rs.23,000/- and applying '13' multiplier has computed the loss of income due to 15% disability at Rs.5,38,000/-. It is the contention of the appellant that when the percentage of disability is only 18% and when there is no evidence that disability resulted in loss of earning capacity, the Tribunal ought not to have adopted multiplier method. The claimant sustained head injuries and due to grievous injuries, in the left leg, left knee was replaced and artificial knee was fixed. It is specifically contented that the claimant is not able to continue his avocation on account of his injuries which is not disputed. Considering the nature of injuries the Tribunal has applied multiplier method, where I do not find any infirmity. The award under other heads cannot be said to be excessive warranting interference. Though the appellant would contend that due to non wearing of helmet, 15% negligence ought to have been fixed on the claimant, before the Tribunal no oral and documentary evidence was let in by the appellant. In the absence of such rebuttal evidence, I am not inclined to interfere with the award passed by the Tribunal.

6. The appellant is directed to deposit the entire award amount with interest and costs as awarded by the Tribunal less the amount already deposited to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the same without filing formal permission petition before the Tribunal.

7. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

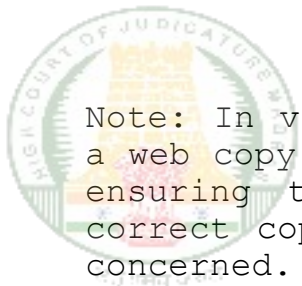
Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

The Special Subordinate Court (Motor Accidents Claims Tribunal),
Madurai.

Copy to

The section Officer,
VR. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-8966[F] dated 05/03/2021)

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-9335[F] dated 08/03/2021)

C.M.A. (MD) No.273 of 2020
04.03.2021

RK (16.08.2021) 3P 6C