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C.M.A.No.2575 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.11.2022

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2575 of 2014

M/s.Reliance General Insurance Co.Ltd.,
The Branch Office,
No.408, 3rd floor,
Perundurai Road, Erode - 638 011

...Appellant

Vs.

1.M.Manikandan

2.V.Murugesan

3.S.P.Kandasamy

(Respondents 2&3 ex-parte in Lower Court)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 25.05.2012 in M.C.O.P.No. 118 of 2011, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Erode.

For Appellant	: M/s.Harini for M.B.Gopalan
For R1	: Mr.R.Nalliappan
For R2 and R3	: <i>Ex-parte</i>



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JUDGMENT

The Insurance Company has challenged the Award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode in M.C.O.P.No.118 of 2011 on the ground of quantum.

2. The brief facts are as follows and the ranking of the parties herein are as per their rank before the Tribunal.

3. The petitioner has filed the above claim petition seeking compensation of a sum of Rs.10,00,000/- for the injuries sustained by him in a road accident on 05.04.2010. The petitioner, who is 24 years, claimed to be a machine operator (Computer Numerical Control) with M/s.Craftsman Automation Company, Coimbatore earning a monthly income of a sum of Rs.10,150/-. It is his case that on the said date, he was riding his motorcycle, bearing Registration No.TN-66A-0063 on the Coimbatore to Avinashi Road travelling in an East-West direction. While so, as he neared Jayanthi Textiles, a lorry bearing Registration No.KA-01-C-5802 travelling in the same direction was being driven by its driver in a rash and negligent manner



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without adhering to the traffic Rules and Regulations. The said vehicle dashed against the petitioner's motor-cycle, on account of which, he had fallen onto the road and sustained multiple injuries and bone fracture. The petitioner would submit that he had sustained the following grievous injuries on account of the accident.

- i) Bone fracture at right pelvis*
- ii) Bone fracture at left pelvis.*
- iii) Bone fracture at left femur*
- iv) Fracture at public ram;*
- v) Fracture left sacrum and bilateral superior and inferior public ram;*
- vi) Injury at kidney;*
- vii) Grievous injury in abdomen;*
- viii) Abrasion at back side of the body from shoulder till hip;*
- ix) Laceration injury all over the body.*

The petitioner would submit he had undergone two surgeries where a plate and screw were implanted and external fixator was also fixed. That apart, he has also undergone a surgery of the abdomen.



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4. The first respondent is the driver of the vehicle and second respondent is the owner of the vehicle and they were absent and *ex-parte* before the Tribunal. The third respondent-Insurance Company had alone contested the said claim denying the averments contained in the claim statement and also questioning the age, income and occupation of the petitioner. They had also raised a contention that the driver of the lorry did not possess a valid and effective driving licence at the time of the accident to drive the lorry. They had also pleaded contributory negligence by contending that the petitioner was equally negligent in driving his vehicle and that the liability should also be fastened on the petitioner. They had also put the second respondent to strict proof of the fact that the lorry had a valid and subsisting fitness certificate and an effective policy on the date of the accident.

5. The Tribunal below on considering the evidence on record held that the accident had occurred only on account of the rash and negligent driving by the first respondent and consequently, held the third respondent liable to pay the damages to the petitioner as the insurer of the second respondent's lorry. The Tribunal taking into account the period of



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hospitalisation undergone by the petitioner as also the surgeries performed on

him and taking note of Exs.A11,12,14 and 15, awarded a sum of Rs.2,00,000/- under the head of medical expenses and allied expenditure.

The Tribunal has considered the evidence of P.W2-an Orthopaedic Surgeon, who had issued Ex.A26-Disability certificate assessed the petitioner's disability at 35.8%. The Tribunal has also relied upon Ex.A16-Pay Slip to come to the conclusion that the monthly income of the petitioner is a sum of Rs.10,150/- and taking note of the nature of the injuries has adopted a multiplier method to assess the compensation under the head of disability and arrived at a sum of Rs.4,32,000/-. No other amounts have not been granted any other head. Challenging the said Award of quantum, the Insurance Company is before this Court.

6. The only ground challenged is that the Tribunal has erred in taking into account the entire salary as provided in Ex.A16, Ms.Harini, appearing on behalf of the appellant-Insurance Company would submit that the salary certificate has not been marked through employer, but has been produced on the side of the petitioner. Therefore, this cannot be taken as a conclusive proof of the salary.



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7. Per contra, Mr.R.Nalliappan, learned counsel appearing on behalf of the first respondent / petitioner would submit that the third respondent has not denied the contention of the petitioner in his claim petition that he was employed with M/s.Craftsman Automation Company on a monthly income of Rs.10,150/-. The document which has been marked as Ex.A16-Pay slip has been addressed by the Company to the petitioner himself and therefore, the objection of the third respondent cannot be sustained. Therefore, he would submit that no exception can be taken to the said document.

8. Heard the learned counsels on either side and perused the materials available on record.

9. Since the only objection is adoption of a sum of Rs.10,150/- as monthly income, it would suffice if the pay slip-Ex.A16 is examined along side Exs.A23 and A24. Ex.A16 is the pay slip issued to the petitioner for the month of August 2008. Ex.A23 is the certificate that has been issued by the very same Company-M/s.Craftsman Automation Company Private Limited, giving a good conduct certificate to the petitioner, who had resigned his



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employment. The certificate would indicate that the petitioner was working with M/s.Craftsman Automation Company Private Limited from 02.06.2008 till 05.04.2010, when the accident had taken place. The certificate has been issued on 24.08.2010. Further, Ex.A24 is the bank statement of the petitioner in which his address has been shown as “C/o.Craftsman Automation Pvt.Ltd, Coimbatore”. Therefore, the Tribunal below has rightly taken note of Ex.A16-Pay Slip and fixed the monthly income at Rs.10,150/-. I see no reason to interfere with the same. That apart, the Tribunal has awarded compensation of a sum of Rs.2,00,000/- only under the heads of medical expenses and permanent disability and a sum of Rs.10,000/- under the head of pain and suffering, though the petitioner had undergone three surgeries. Therefore, the Award of the Tribunal appears to be very reasonable and I see no reason to interfere with the same. Accordingly, civil miscellaneous appeal is dismissed. No costs.

04.11.2022

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P.T.ASHA, J.,

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To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Erode.
2. The Section Officer,
V.R.Section, High Court, Madras.

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