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Civil Miscellaneous Appeal Nos.321 of 2020 & 86 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

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**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

**Civil Miscellaneous Appeal Nos.321 of 2020
and 86 of 2022
and CMP.No.560 of 2022 in CMA.No.86 of 2022**

CMA.No.321 of 2020

Rajaram

.. Appellant

Vs.

1. Kumar
2. Reliance General Insurance Co., Ltd.,
Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri, Salem.

3. Kavitha
4. United India Insurance Co., Ltd.,
146 N, Kumar Complex, Tiruchengode,
Namakkal District.

.. Respondents

CMA.No.86 of 2022

M/s.Reliance General Insurance Company Limited,
Sri Lekshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem

...Appellant



Civil Miscellaneous Appeal Nos.321 of 2020 & 86 of 2022

Vs.

1. Rajaram
2. Kumar
3. Kavitha
4. United India Insurance Co., Ltd.,
146 N, Kumar Complex, Tiruchengode,
Namakkal District

.. Respondents

Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act,1988, against the judgment and decree passed in MCOP.No.938 of 2011 dated 02.07.2018 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran
[appellant in CMA.No.321 of 2020]
[R1 in CMA.No.86 of 2022]

For Respondent : Mr.P.Suresh
[appellant in CMA.No.86 of 2022]
[R2 in CMA.No 321 of 2020]

[R1 in CMA.No.321 of 2020 -*Ex parte*]
[R2 in CMA.No.86 of 2022 – *Ex parte*]
[R3 in CMA.No.321 of 2020 & 86 of
2022 served – No appearance]

Mr.J.Chandran [R4 in both C.M.As]



JUDGMENT

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(Judgment of the court was delivered by R.SUBRAMANIAN.,J)

The challenge in both these appeals is to the award of the Motor Accident Claims Tribunal, Sankari in M.C.O.P. No.938 of 2011 granting a sum of Rs.22,55,000/- (Rupees Twenty Two Lakhs and Fifty Five Thousand only) as compensation for the injuries caused to the claimant in a road accident that occurred on 06.10.2011.

2. According to the claimant, he was employed as a driver of the lorry bearing Registration No.TN-67-7407. On 06.10.2011 at about 10.00 a.m, when he had parked the lorry near Ranga Vidyalaya School, Rayarpalayam on Tiruchengode - Namakkal Road and taking rest, a lorry bearing Registration No.KA-01-C-8874 owned by the third respondent and insured with the second respondent, that was driven by the first respondent in a rash and negligent manner hit against the stationary lorry from behind. As a result of the impact, the claimant was thrown out of the stationary vehicle and suffered several injuries. Due to the injuries suffered, his right leg was amputated above the knee. He was also in-patient for nearly a month. Claiming that, as a result of the disability suffered by him, he has lost his job and he cannot work as a driver,



the claimant sought for a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

3. The second respondent/insurance Company resisted the claim contending that the accident did not happen in the manner suggested by the claimant. It was claimed that there was negligence on the part of the claimant also in having parked the lorry in 'No Parking' area. The Insurance Company further contended that the disability caused by the injury has been exaggerated resulting in disproportionate claim for compensation.

4. Before the Tribunal, the claimant was examined as P.W.1 and Exs.P-1 to P-17 were marked. The Insurance Company viz., the second respondent did not let in any evidence. The fourth respondent is the insurer of the lorry, which was parked. The Tribunal took into account the fact that the FIR has been filed against the driver of the lorry owned by the third respondent and insured with the second respondent, noted the fact that there was no evidence on the side of the Insurance Company and concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No.KA-01-C-8874. On the quantum, though there was no evidence for the



exact income of the claimant, the Tribunal took the notional income at Rs.10,000/- per month as claimed by him in his claim petition and applied a multiplier of 17 on the finding that he was aged about 30 years. The Tribunal accepted the estimation of the disability at 85% made by the Medical Board and that awarded a sum of Rs.17,35,000/- towards loss of earning capacity. The Tribunal also awarded a sum of Rs.3,30,000/- for medical expenses, Rs.75,000/- for pain and suffering, Rs.10,000/- for transport, Rs.30,000/- for extra nourishment, Rs.20,000/- for assistance, Rs.50,000/- for future medical expenses and Rs.5,000/- for loss of property, in all, the Tribunal awarded a sum of Rs.22,55,000/- (Rupees Twenty Two Lakhs and Fifty Five thousand only).

5. We have heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant/claimant in CMA.No.321 of 2020, Mr.P.Suresh, learned counsel for Mr.K.Moorthy appearing for the second respondent in CMA.No.321 of 2020 and appellant in CMA.No.86 of 2022 and Mr.J.Chandran, learned counsel appearing for the fourth respondent in both the appeals.

6. The respondents 1 and 3 in CMA.No.321 of 2020, who are



respondents 2 and 3 in C.M.A.No.86 of 2022 viz., the owner and driver of the offending lorry have remained *ex-parte* before the Tribunal. Hence, notice to them is dispensed with.

7. Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant/claimant in C.M.A.No.321 of 2020 would vehemently contend that the Tribunal erred in not taking into account the future prospects while calculating the loss of earning capacity. According to him, the Tribunal should have taken into account the future prospects at 40% in the light of the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., -vs- Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. He would also draw our attention to the award of the Tribunal to contend that compensation awarded under the heads of pain and suffering, extra nourishment, attender charges and future medical expenses are very low. According to him, though the Tribunal has adverted to the fact that the claimant would require an artificial limb, it has awarded only Rs.50,000/- towards future medical expenses including the cost of such artificial limb. This according to him is too low. He would also contend that the Tribunal must have awarded more amount under the head of pain and suffering, as the suffering because of



the amputation would continue till his life time, though the pain would subside after sometime.

8. Contending contra, Mr.P.Suresh, learned counsel appearing for the insurer of the offending vehicle and the appellant in CMA.No.86 of 2022 would submit that the Tribunal has taken Rs.10,000/- as notional income even in the absence of any evidence. Therefore, there is no ground for adopting a further increase for future prospects. The learned counsel would also point out that the lorry was parked on the main causeway and that by itself would amount to negligence on the part of the claimant, who was admittedly the driver of the parked lorry. Therefore, according to the learned counsel, the Tribunal must have apportioned the negligence as there was some contribution by the claimant himself towards the accident. The learned counsel would further submit that the amount awarded on the other heads are reasonable and hence, the award must be reduced by apportioning certain amount of negligence on the part of the claimant also.

9. We have considered the rival submissions.



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10. As regards the submission of the learned counsel appearing for the Insurance Company/appellant in CMA.No.86 of 2022 regarding contributory negligence, we find it difficult to accept the submission due to lack of evidence. Contributory negligence is also a fact which has to be proved like any other fact. There should have been some evidence on the side of the Insurance Company when it seeks to invoke the principle of contributory negligence. The driver of the offending lorry has not been examined. Moreover, the accident had occurred at 10.00 a.m. in the morning in broad day light. The Tribunal has discussed the evidence with reference to the sketch Ex.P-5. The Tribunal has found that it is a straight stretch without any bends and there was enough visibility. Therefore, it would have been very easy for the driver of the offending vehicle to notice the parked lorry at a distance.

11. We do not find any other material on record for us to conclude that the Tribunal was wrong in its conclusion. We are, therefore, unable to accept the submission of the learned counsel appearing for the appellant in CMA.No.86 of 2022 based on the contributory negligence.

12. On the quantum, we find considerable force in the contention of



Mr.T.S.Arthanareeswaran, learned counsel appearing for the claimant. When he seeks to fault the Tribunal for not having applied future prospects, the Tribunal has taken the amount of Rs.10,000/- as notional income based on the evidence of the claimant but it has failed to add future prospects, which ought to have been added in view of the judgment of the Hon'ble Supreme Court in ***Pranay Sethi*** referred to supra.

13. As per the said judgment of the Hon'ble Supreme Court, 40% of the income is to be added towards future prospects for the victim who is aged about 30 years. If we have to add 40% of the income and calculate the loss of earning, it would be Rs.14,000 x 12 x 17 x 85% = Rs.24,27,600/- (Rupees Twenty Four Lakhs Twenty Seven Thousand and Six hundred only).

14. Though the Tribunal has taken into account the requirement of an artificial limb, which has added only Rs.50,000/- for the same. We are of the opinion that it is very less. We find that the claimant is entitled to have Rs.1,00,000/- (Rupees One Lakh only) towards the cost of artificial limb.

15. Similarly, the compensation awarded for pain and suffering also



deserves to be enhanced to Rs.1,50,000/- from Rs.75,000/- since the claimant has to undergo the suffering throughout his lifetime. The claimant is also entitled to Rs.50,000/- towards extra nourishment and another Rs.50,000/- towards attender charges. Thus, the total compensation would work out to Rs.31,22,600/-. We round it off to Rs.31,20,000/-

16. In fine, CMA.No.321 of 2020 is allowed in part. The compensation awarded by the Tribunal is enhanced to Rs.31,20,000/- (Rupees Thirty One Lakhs and Twenty Thousand only). The appeal filed by the Insurance Company stands dismissed. Parties will bear their own costs in both the appeals.

17. The insurance Company will deposit the balance amount as per the enhanced award along with proportionate interest within a period of eight(8) weeks from the date of receipt of a copy of this order and on such deposit, the claimant is entitled to withdraw the entire amount so deposited.

[R.S.M., J] [S.S.K., J]
16.12.2022

Index: Yes/No
mp/srm



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To
The Motor Accident Claims Tribunal,
Subordinate Judge, Court, Sankari.



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Civil Miscellaneous Appeal Nos.321 of 2020 & 86 of 2022

R.SUB RAMANIAN, J
and
SATHI KUMAR SUKUMARA KURUP, J

mp/srm

CMA. Nos.321 of 2020 & 86 of 2022

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