



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
C.M.A(MD)No.358 of 2021

and

C.M.P. (MD)Nos.2956 and 5748 of 2021

Reliance General Insurance Company Ltd.,
No.10/4/4, Thaga Blaza, 2nd Floor,
South Bypass Road, Vannarapettai,
Tirunelveli-627 003,
Through its Branch Manager ... Appellant / 2nd Respondent
-Vs-

1.Samule Gaodwin
(through his father and guardian, namely, Anbazhagan)
... 1st Respondent / Petitioner
2.Blewin John
... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying this Court to set aside the judgment and decree dated 4th August, 2020 passed in M.C.O.P.No.301 of 2016 on the file of the Motor Accident Claims Tribunal, Tirunelveli / Special Sub Judge dealing with MCOP Cases, Tirunelveli.

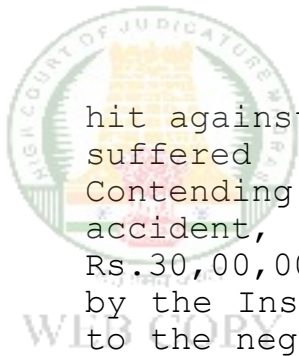
For Appellant : Mr.V.Sakthivel
For R1 : Mr.T.Lenin Kumar
For R2 : No Appearance

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The Insurance Company is on appeal. The challenge is to the award, granting a sum of Rs.21,86,505/- (Rupees Twenty One Lakhs Eighty Six Thousand Five Hundred and Five Only) for the injuries suffered by the first respondent in a motor accident that occurred on 26.01.2012.

2.The first respondent was a minor, aged about 14 years on the date of the accident. The claimant / first respondent would contend that while he was riding as a pillion rider in a motor vehicle driven by one Rohit Kevin Pernanto, the two wheeler



hit against the electric post and as a result of which, the claimant suffered serious injuries, which rendered him paraplegic. Contending that his entire life has been affected because of the accident, the claimant sought for compensation of Rs.30,00,000/- (Rupees Thirty Lakhs Only). The claim was resisted by the Insurance Company, contending that the accident occurred due to the negligence of the claimant, inasmuch as the claimant was not wearing helmet. The quantum of compensation claimed was also termed as excessive.

3.At trial, the father of the injured claimant was examined as P.W.1 and atleast 4 doctors were examined as P.W.2 to P.W.5 and Ex.P.1 to Ex.P.20 were marked. On the side of the Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and Ex.R.1 to Ex.R.3 were marked.

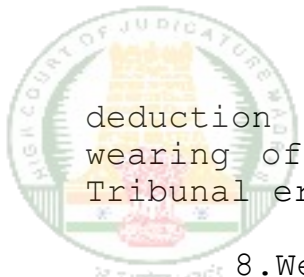
4.The Tribunal, upon consideration of the evidence on record, particularly, First Information Report and the evidence of P.W.1, concluded that the accident occurred due to the negligence of the rider of the two wheeler and as the insurer of the two wheeler, the appellant Insurance Company is liable to pay compensation. On the quantum, the Tribunal assessed functional disability at 64.3%. Since the disability would have an effect on the earning capacity, the Tribunal adopted multiplier method and fixed monthly notional income as Rs.9000/- (Rupees Nine Thousand Only) and 40% was added towards future prospects. The Tribunal adopted multiplier of 18 and awarded following amounts under various heads:-

SL.No.	Heads	Calculation
1	Loss of earning power	Rs.17,49,989/-
2	Medical Bills	Rs.3,31,516/-
3	Attendance Charges	Rs.30,000/-
4	Pain and Sufferings	Rs.50,000/-
5	Transport Expenses	Rs.5,000/-
6	Extra Nourishment	Rs.20,000/-
	Total Compensation Awarded	Rs.21,86,505/-

5.We have heard Mr.V.Sakthivel, learned counsel appearing for the appellant and Mr.T.Lenin Kumar, learned counsel appearing for the first respondent.

6.The second respondent is the owner of the vehicle and he had remained ex-parte before the Tribunal. Hence, notice to him is dispensed with.

7.Mr.V.Sakthivel, learned counsel for the appellant would submit that the Tribunal must have adopted certain percentage of



deduction towards negligence on the part of the claimant (non-wearing of helmet by the claimant). He would also add that the Tribunal erred in adopting the multiplier 18 instead of 15.

8. We are unable to sustain the first contention of the learned counsel for the appellant for the reason that the injured was riding only as pillion rider. Non wearing of helmet by a pillion rider will not amount to contributory negligence. Moreover he was only 14 years old at the time of the accident. As far as the second contention is concerned, we find some force in the argument of the learned counsel for the appellant that multiplier should have been 15 not 18. If we reduce the multiplier from 18 to 15, the loss of dependency would be Rs.14,58,329/- (Rupees Fourteen Lakhs Fifty Eight Thousand Three Hundred and Twenty Nine Only). The difference would be Rs.2,91,660/- (Rupees Two Lakhs Ninety One Thousand Six Hundred and Sixty Only). However, we find that the award under the heads of Attender Charges, Pain and Sufferings and Extra Nourishment are substantially low. It is on record that the claimant is suffered from serious injuries and his mental faculties have been affected and he has been rendered paraplegic. Therefore, the Tribunal would have awarded some more compensation under the above heads.

9. On a careful assessment, we find that this excess amount of Rs.2,91,660/- awarded under the head of loss of earning power could be disbursed under the heads of Attender Charges, Pain and Sufferings and Extra Nourishment. On an overall analysis, we find that the award granted by the Tribunal is just and reasonable. Therefore, we do not find any ground to interfere with the award of the Tribunal. The order of pay and recovery granted by the Tribunal is sustained. Hence, this Civil Miscellaneous Appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr

To

1. The Special Sub Judge dealing with MCOP Cases,
Motor Accident Claims Tribunal, Tirunelveli.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-14447[F] dated
25/03/2022)

C.M.A. (MD) No. 358 of 2021
24.03.2022

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