IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2647 of 2019
and
C.M.P.No.12984 of 2019

The Branch Manager,
Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
Nungambakkam, Chennai. ... Appellant

Vs.

1.Mohamad Basha
2.Muthukumar ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 11.10.2018 made in M.C.O.P.No.727 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Puducherry.

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.V.Pavithra
for M/s.V.Srimathi [R1]
Notice dispensed with vide order dated 28.11.2022 [R2]

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JUDGEMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal, Additional Sub Judge, Puducherry in M.C.O.P.No.727 of 2015, dated 11.10.2018, the insurance company has filed the present appeal.

2. As per the claim petition, on 21.07.2013 at around 9.00 p.m., when the claimant was riding his motorcycle bearing Regn.No.TN-32-C-9207, the mini lorry bearing Reg.No.TN-02-AK-0978 coming from the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle of the claimant, in which the claimant sustained grievous injuries all over the body including head. For the injuries suffered by the claimant, the claimant had filed a claim petition seeking compensation at the hands of the insurer of the first respondent's vehicle.

3. Before the Tribunal, the claimant examined one witness viz., P.W.1 and marked 10 documents viz., Ex.P.1 to Ex.P.10. No witnesses were examined nor any documents were marked on the side of the

respondents. The Tribunal has marked the Medical Board Certificate as Ex.X.1. After adjudication, the Tribunal by its award dated 11.10.2018 awarded compensation in a sum of Rs.18,83,385/- with an interest of 7.5% p.a. directing the insurance company to pay the said compensation. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, in the absence of any proof towards the employment earnings, the compensation awarded by the Tribunal is erroneous. He further submitted that the partial permanent disablement assessed under Ex.X.1 is in respect of whole body and not relatable to loss of earning power to the extent of 77.5% and therefore, he submitted that the compensation awarded is excessive. Equally, the compensation awarded under the various heads are on the higher side and the same deserves to be interfered with.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that, by considering all the materials on

records, the Tribunal has awarded compensation in favour of the claimant under various heads, which are just and reasonable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as the first respondent and also perused the materials available on record.

7. There is no quarrel with the fact that the accident had happened due to the rash and negligent driving of the driver of the mini lorry, for which a finding has been rendered by the Tribunal. The said finding is not assailed by the appellant/insurance company. Therefore, this Court confirms the finding with regard to rash and negligent driving of the driver of the mini lorry.

8. The only issue is with regard to the fixation of disability at 77.5% and adoption of multiplier method. In this regard, there is no dispute that the claimant was admitted in the hospital for the various grievous injuries and had taken treatment. Ex.P.6 is the discharge

summary with regard to the claimant, which reveals that the claimant was admitted on 22.07.2013 and discharged on 20.08.2013. Thereafter, re-admitted on 23.08.2013 and discharged on 01.09.2013. Therefore, for more than 40 days, the claimant has been under hospitalization. Though disability was fixed by the doctors in the hospital, the claimant was referred to the medical board for ascertaining the actual disability suffered by him. Ex.X.1 is the assessment of the medical board with regard to disability of the claimant, which has been assessed at 77.5% and the medical board opined that the claimant has suffered post head injury sequale, fracture femur left, fracture C1 8C4 vertebrae. The earning of the claimant has been proved through Ex.P.8/salary certificate and his age also stands established through Ex.P.9. The nature of the injuries suffered by the claimant as is evident from Ex.X.1, the opinion of the medical board and the extent of the disability assessed by the medical board to the extent of 77.5%. Even according to the medical board, it is a functional disability, which would definitely hamper the claimant in earning his livelihood as has been earned by him prior to the accident. Therefore, necessarily his earning has to be offset by the appellant/ insurance company to the extent to which he was earning before the accident. When the disability has been assessed as functional disability, which would have a negative effect in the earning of the claimant, the Tribunal has rightly adopted the multiplier method and based on the earnings of the claimant, which has been evidenced through Ex.P.8 has arrived at the compensation, which cannot be stated to be erroneous.

9. Though it is argued on behalf of the appellant that the compensation under the various other heads are excessive, however, considering the nature of the injuries suffered by the claimant and the period of treatment and the impact which injuries have on the daily life of the claimant, the compensation awarded by the Tribunal under the various other heads cannot be said to be excessive and the same does not require any interference.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 06.10.2020 made in M.C.O.P.No.905 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Puducherry is confirmed. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the

credit of M.C.O.P.No.727 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is also dismissed.

29.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal, Additional Sub Judge, Puducherry.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.,

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C.M.A.No.2647 of 2019

29.11.2023