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C.M.A.No.1932 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

C.M.A.No.1932 of 2023

and

C.M.P.No.18742 of 2023

Reliance General Insurance Co. Ltd.,
Reliance Towers, 6th Floor,
Haddows Road, Chennai.

...Appellant

Vs.

1.Rajavel
2.Vignesh

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 29th November 2022 passed in MCOP.No.933 of 2017, by the learned Motor Accident Claims Tribunal, II Additional Sub-Court, Cuddalore.

For Appellant : Mrs.C.Bhuvanasundari



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J U D G M E N T

WEB COPY (Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The challenge in this appeal is to the grant of compensation of a sum of Rs.17,89,133/- for the permanent disability suffered by the claimant, as a result of the injuries in a motor accident that occurred on 20.09.2016.

2. According to the claimant, when he was riding as a pillion rider in a two wheeler from Cuddalore-Thirukoviloor bypass road, the car bearing Registration No.TN-19-L-8211 driven in a rash and negligent manner came from behind and hit against the two wheeler, resulting in the claimant suffering serious injuries in his right leg. After taking initial treatment in the Government Medical College Hospital, Mundiampakkam, he was admitted in JIPMER Hospital, Puducherry and treated as in-patient between 02.10.2016 and 19.10.2016,. Despite proper treatment given, the right leg of the claimant was amputated below the knee. Claiming that the petitioner, who was aged about 46 years at the time of accident, was earning Rs.10,000/- by working as an agricultural labourer, he sought for a compensation of Rs.50,00,000/-.



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3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant. It was contended that there were three persons travelling in the two wheeler and therefore claimant has also contributed to the accident. It is the further contention of the Insurance Company that the disability claimed is on the higher side and the compensation claimed is excessive.

4. At trial, the injured claimant was examined as PW1 and Exs.A1 to A11 were marked. The Insurance Company did not chose to let in any evidence and the owner of the car remained absent.

5. The disability certificate issued by the Medical Board was marked as Ex.C1. On a consideration of the evidence on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the car. It drew support from the First Information Report that was marked as Ex.P1 and the evidence of PW1.



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6. On the quantum, the Tribunal found that the disability caused due to the amputation was 85% as certified by the Medical Board. The Tribunal took into account the fact that the claimant was an agricultural labourer and the amputation of one leg below the knee would have very serious impact on his avocation.

7. The Tribunal took the monthly income at Rs.9,000/-, added 25% towards future prospects, applied the multiplier '14' and arrived at the total loss of earning capacity at Rs.16,06,500/-. The Tribunal added a sum of Rs.60,000/- towards pain and sufferings, Rs.30,000/- towards loss of amenities, Rs.20,000/- towards extra nourishment, Rs.20,000/- towards attendant charges, Rs.20,000/- towards transport to hospital, Rs.17,633/- towards medical bill and Rs.15,000/- towards future medical expenses. Thus, the total compensation awarded by the Tribunal worked out to Rs.17,89,133/-. Aggrieved the Insurance Company is on appeal.

8. We have heard Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant/ Insurance Company.



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9. Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant would vehemently contend that the Tribunal should have deducted certain percentage towards contributory negligence in as much as three people were travelling in the motorcycle at the time of the accident.

10. We are unable to accept the said submission of the learned counsel in the absence of evidence on the side of Insurance Company. The very fact that three people travelled in a motor cycle will not be a cause for attributing negligence. The contributory negligence is after all a question of fact which has to be proved as any other fact. If the Insurance Company wants to raise a plea contributory negligence it must let in evidence on the manner in which the accident had occurred.

11. PW1, the injured claimant himself has spoken about the manner in which the accident occurred and there is no cross-examination of him on the aspect of three people travelling in the motor cycle. We are therefore unable to conclude that there was contributory negligence on the part of the claimant himself.



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12. On the quantum, the learned counsel would vehemently contend that the injury suffered, being amputation below the knee, the Tribunal was not right in fixing the quantum of disability at 85% instead of 50%. She would seek to rely upon the percentage of disability fixed under the Employees Compensation Act. We do not think we could adopt that as a safe method for fixing the quantum of disability. Each injury may result in different percentage of disability depending upon the avocation of the person. If he is a skilled worker, even loss of a thumb or few fingers in the right hand would result in 100% disability. For an unskilled labourer, loss of one leg below the knee will have a massive effect on his avocation and his earning power would be substantially reduced. For a Computer professional or a Lawyer, loss of a limb may not have any effect on their earning power. Therefore, we cannot go by the fixed quantum of disability depending on the injury or loss of limb suffered by the injured. The same will vary in accordance with the avocation of the injured.

13. Adverting to the case on hand, the injured claimant was an agricultural labourer and loss of right leg below the knee would definitely



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have a serious impact. We are therefore unable to fault the Tribunal for having fixed the percentage of disability at 85%. Adoption of income at Rs.9,000/- per month cannot be considered to be too high. The compensation on the other heads is also reasonable.

14. We therefore do not find any ground to interfere with the award of the Tribunal. The appeal therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (R.K.M.,J.)
22.08.2023

dsa
Index :Yes/No
Internet :Yes/No
Neutral Citation :Yes/No
Speaking order /Non-Speaking order

To

The Motor Accident Claims Tribunal,
II Additional Sub-Court, Cuddalore.

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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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