



C.M.A.No.2672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2672 of 2023
and CMP.No.24828 of 2023

Reliance General Insurance Co. Ltd.,
126, KPS Complex, III Floor
Kovai Road, Karur
Erode - 639 002.

..... Appellant / 3rd Respondent

Vs

1.Kumar Kulaiappan
2.Pasupathi Kamalakannan
3.Ashok Kumar

... Respondents / Petitioner,
Respondents 1,2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the decree and judgment dated 28.11.2022 passed in M.C.O.P.No.589 of 2019 by the Motor Accident Claims Tribunal, Special Sub Court at Coimbatore.

For Petitioner : Ms.C.Bhuvanasundari

For Respondent : Mr.M.Lokesh for R1



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JUDGMENT

In a road accident that took place on 13.12.2018, a certain Kumar Kulaiappan suffered head injuries when a motorcycle that he was riding was knocked down by another motorcycle bearing No.TN70 Y 1112 belonging to the second respondent and insured with the appellant. As indicated, Kumar Kulaiappan suffered head injuries and he was hospitalised for 12 days. The medical board vide Ext.C1 has reckoned the percentage of disability at 60%. The Tribunal quantified the compensation payable for permanent disability at Rs.5,000/- for every percentage of disability. In all, it awarded Rs.15,75,697/-, of which, more than nearly 2/3rd component constitute medical expenses of Rs.10,34,697/-. The break-up of the award is as below :

<i>Sl.No.</i>	<i>Heads of compensation</i>	<i>Award of the Tribunal (Rs.)</i>
1	Pain and Sufferings	80,000/-
2	Loss of Amenities	50,000/-
3	Loss of Earnings	36,000/-
4	Medical Bills	10,34,697/-
5	Permanent Disability	3,00,000/-
6	Attendant Charges	30,000/-
7	Nourishment Expenses	30,000/-
8	Transportation Expenses	10,000/-
9	Loss to clothing	5,000/-
Total :		15,75,697/-



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2. Aggrieved by the approach of the Tribunal, the insurance company has preferred this appeal. The learned counsel for the appellant argued that (a) the Tribunal had overlooked the fact that the victim did not possess a valid and effective driving licence; and (b) that the victim was not wearing helmet, and consequently Tribunal did not apportion the negligence evenly as between the rider of the offending vehicle and the claimant.

3. Per contra, the learned counsel for the first respondent submitted that the victim indeed was wearing a helmet, but that was thrown away at the point of accident. Secondly, merely because someone does not possess a driving licence, that does not give licence to the rider or driver of any other motorcycle to knock him off.

4. This Court is impressed with the response of the counsel for the first respondent. Merely because a person does not bear a licence which even though is not approved in law, does not automatically be construed as a contributory factor for accident, unless it is shown that such rider of the motorcycle was also in negligence. So far as the issue regarding helmet is



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concerned, there was some heated arguments between both the counsel, but at the end of the day, this Court chooses to grant benefit to the claimant.

5.To conclude, this Court does not find any merit or material as warranting interference with the award of the Tribunal. This Court is informed that the insurance company had deposited only Rs.25,000/-. The appellant / insurance company is now required to deposit the differential sum with interest at the rate of 7.5% within a period of six weeks from today. Once the amount is deposited, the claimant is free to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2023

Index : Yes / No
Speaking order / Non-speaking order
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To:

1.The Judge
Special Sub Court
Motor Accident Claims Tribunal
Coimbatore.

2.The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

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