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C.M.A.No.404 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.404 of 2023

and

C.M.P.No.3419 of 2023

The Branch Manager,
Reliance General Insurance Company Ltd.,
15-A Thillai Nagar, Main 11th Cross,
PLA Kanagu Towers, 2nd Floor,
Trichy Town, Taluk and Munsif.

...Appellant

Vs.

1.N.Baskaran

2.N.Tamilmani

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 23.10.2021 passed in M.C.O.P.No.186 of 2018 on the file of MACT (Chief Judicial Magistrate Court), Tiruvarur.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.M.Thamizhvel for R1



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J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal challenging the award of the Tribunal made in M.C.O.P.No.186 of 2018 granting a sum of Rs.21,41,400/- as compensation for the injuries caused to the 1st respondent in a road accident that occurred on 25.09.2018 at around 4.00 p.m.

2. According to the 1st respondent, when he was riding a motor cycle along with one Chinnapillai from Thiruvarur to Kumbakonam main road, on the left side of the road, the driver of the Mahindra Maximo load van bearing Registration No.TN-50-M-4744 had came in the opposite direction driven by its driver in a rash and negligent manner dashed against the driver of the two-wheeler, resulting in very grievous injuries to the 1st respondent. The 1st respondent sustained a fracture in the right femur and both his legs were crushed. He took treatment as in-patient in Thiruvarur Government Medical College Hospital between 25.09.2018 and 03.10.2018 and a surgery was performed. Thereafter, he was referred to a private



hospital at Thiruvavarur, where he took treatment as in-patient between 03.10.2018 and 14.10.2018. Again he was admitted in hospital on 29.10.2018 and continued to be treated till 04.11.2018. Two surgeries were performed during the said period. Contending that the 1st respondent has lost his livelihood and he will never be able to perform the centring fitter work because of the injuries, the 1st respondent/ claimant sought for a compensation of Rs.50,00,000/-.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the 1st respondent/ claimant and there was negligence on the part of the 1st respondent. The compensation claimed was also termed as highly excessive and the nature of injuries and the consequent disability was also questioned.

4. The 1st respondent/ claimant examined himself as PW1, apart from examining one Babu Karthikeyan as PW2. Exs.P1 to P17 were marked. The disability certificate issued by the Medical Board was marked as Ex.C1. The Insurance Company did not let in any evidence.



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5. The Tribunal concluded that the accident occurred due to the negligent driving of the Mahindra Maximo load van owned by the 2nd respondent and insured with the appellant/ Insurance Company.

6. On the quantum, the Tribunal found that though the Medical Board has assessed the disability at 70%, considering the nature of work done by the 1st respondent/ claimant, the disability should be taken at 100% since he would not be able to do the same work ever again during his life time because of the injuries caused. The Tribunal recorded a finding that as a result of the accident his right knee bone was completely crushed and the Femur, Tibia and Tibula bones were also damaged. On the said finding, the Tribunal concluded that the disability would be 100%.

7. The Tribunal took the monthly notional income at Rs.9,000/-, added 25% towards future prospects and adopted the multiplier '14' and fixed the loss of earning capacity at Rs.18,90,000/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards pain and suffering, Rs.25,000/-



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towards extra nourishment, Rs.5,000/- towards transportation, Rs.10,000/- towards attender charges, Rs.1,00,900/- towards medical expenses based on bills, Rs.10,000/- for loss of amenities and Rs.500/- towards damage to cloths. In all the Tribunal awarded a sum of Rs.21,41,400/-. Aggrieved, the Insurance Company is on appeal.

8. We have heard Mr.P.Suresh Srinivasan, learned counsel appearing for the Insurance Company and Mr.M.Thamizhvel, learned counsel appearing for the 1st respondent.

9. Mr.P.Suresh Srinivasan, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in fixing the disability at 100%, when the Medical Board had fixed the disability at 70%. He would further contend that the Tribunal ought to have held that the injured has also contributed to the accident because of his negligent driving.



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10. We have considered the submissions of the learned counsel for the appellant. Contributory negligence has to be proved like any other fact. As we have pointed out, the Insurance Company has not let in evidence. In the absence of such evidence, we are unable to countenance the submission of the learned counsel on the ground of negligence.

11. Adverting to the percentage of disability, we find that the Tribunal was justified in fixing the disability at 100%, particularly considering the nature of the work the 1st respondent was doing. Admittedly the 1st respondent was a centring fitter. As a result of the accident, the right leg has been rendered completely useless. Therefore, he cannot perform the said work as centering fitter any more. The Tribunal has rightly relied upon the judgment of the Hon'ble Supreme Court in ***Jakir Hussein Vs. Sabir and others*** reported in ***2015 (1) TN MAC 321 (SC)*** to arrive at the conclusion that the disability would be 100%. We are unable to find fault with the Tribunal for having come to such a conclusion.



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12. We therefore do not see any merit in the appeal. The appeal fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (K.G.T.,J.)
21.02.2023

dsa

Index :No
Internet :Yes
Neutral citation :No
Speaking order

To:-

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruvarur.

R.SUBRAMANIAN, J.
and

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dsa

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