IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2600 of 2022

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, Bharathi Street,
Omalur Main Road, Swarnapuri,
Salem – 636 004. .. Appellant

Versus

1.Velu
2.P.Palanisamy .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2020 made in M.C.O.P.No.676 of 2014 on the file of the Motor Accident Claims Tribunal, Distrct and Sessions Court, Dharmapuri.

For Appellant : Ms.C.Bhuvanasundari

For R1 : Mr.Vel (party-in-person)
For R2 : No Appearance

JUDGMENT

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

The Insurance Company is on appeal aggrieved by the award of compensation of Rs.38,61,862/- for the injuries suffered by the first respondent herein in a motor accident that occurred on 29.02.2012.

2. The claimant, a lawyer by profession sought for a compensation of Rs.70 lakhs for the injuries suffered by him in the said accident. According to the claimant, when he was travelling in a motor cycle at about 8.40 a.m. on 29.02.2012 from Errapatti to Padi in Papprapatti - Dharmapuri main road, a lorry bearing registration No.TN-30-U-3466 came from Dharmapuri at a high speed driven by its driver in a rash and negligent manner hit against the claimant. As a result, the claimant suffered various injuries including the injury in the brain and the skull. According to the claimant, he was earning a sum of Rs.1 lakh a month and he was contributing Rs.90,000/- to his family. Because of the accident, he is unable to continue his legal practice and hence, he should be compensated.

3. The defendant Insurance Company resisted the claim by contending that the accident did not occur in the manner suggested by the claimant. It was also claimed that the claimant contributed to the accident by not wearing a helmet. The Insurance

Company also termed the quantum of compensation as excessive.

4. Before the Tribunal, P.Ws.1 to 4 were examined and Exs.P1 to P27 were marked. One Mr.Ramasamy, a legal officer of the Insurance Company, was examined as R.W.1. A report of the Motor Vehicle Inspector was marked as Ex.R1. Disability certificate issued by the Medical Board was marked as Ex.C1.

5. The Tribunal, on a consideration of the evidence on record, fixed the notional income of the injured at Rs.30,000/- per month and adopted a multiplier of '15' and arrived the total loss of income at Rs.54,00,000/-. Taking into account the disability assessed at 55% by the Medical Board, the Tribunal computed the loss of earning power at Rs.29,70,000/-. The Tribunal also awarded following amounts under the following heads:-

Sl.No.	***Heads***	***Compensation***
2.	Loss on earning for 52 weeks	Rs.3,60,000/-
3.	Future medical expenses	Rs.60,000/-
4.	Pain and suffering	Rs.50,000/-
5.	Extra nourishment expenses	Rs.50,000/-
6.	Attender charges	Rs.40,000/-
7.	Medical expenses	Rs.3,20,162/-
8.	Transport bills	Rs.10,000/-
9.	Loss on clothing	Rs.1,000/-
10.	X-Ray bill	Rs.700/-

Aggrieved by the above said compensation, the Insurance Company is an appeal.

6. Ms.C.Bhuvanasundari, learned counsel for the appellant Insurance Company would vehemently contend that the Tribunal erred in fixing the monthly income at Rs.30,000/- without any basis. She would also attack the award of the Tribunal on the ground that though the disability has been assessed at 55% by the Medical Board, the Tribunal had not come to the conclusion that the injured/claimant was rendered unfit to continue his profession in order to apply the multiplier method. She would also point out that the injured/claimant was travelling in his two-wheeler without the helmet. According to her, the Tribunal ought to have deducted certain percentage of compensation towards contributory negligence for helmet-less riding.

7. The respondent, appearing in person, would submit that he is unable to continue the profession as a lawyer because of the accident and he has been rendered jobless. He would also contend that the compensation fixed by the Tribunal itself is on the lower side.

8. We have considered the submissions.

9. We are in agreement with the contention of the learned Counsel for the Insurance Company that the compensation awarded on the heads of loss of earnings

for 52 weeks and future medical expenses cannot be justified, since the Tribunal had applied the multiplier to arrive the compensation for disability and it has rendered a finding that the claimant does not require any further medical treatment. Therefore, the amounts awarded towards loss of earning for 52 weeks, namely, Rs.3,60,000/- and future medical expenses of Rs.60,000/- will have to be deducted. Other amounts, we find, are just and reasonable, since the claimant himself is a lawyer having enrolled in the year 2003 and had a practice for atleast 9 years at the time of accident. So, fixation of Rs.30,000/- as notional income, that too, in the year 2012 cannot be faulted. We, therefore, find that the amounts awarded under other heads are just and reasonable. We do not see any reason to interfere with other heads.

10. For the foregoing reasons, we find that a sum of Rs.4,20,000/-, i.e. Rs.3,60,000/- towards loss of earning for 52 weeks and Rs.60,000/- towards future medical expenses, has to be deducted from the award. Upon such deduction, the award amount would get reduced to Rs.34,41,862/- (Rs.38,61,862-Rs.4,20,000/-). If we deduct 10% for non-wearing the helmet i.e. Rs.3,44,186/-, the balance amount would be Rs.30,97,675/- (Rs.34,41,862 – Rs.3,44,186). Therefore, the claimant would be entitled to the above said sum which we round off to Rs.31,00,000/-. Insurance Company will have 8 weeks to deposit the said award amount if it had not already deposited. On such deposit, the claimant is permitted to withdraw the entire

amount. It is made clear that the claimant would be entitled for the interest as awarded by the Tribunal from the date of claim petition till date the deposit. In fine, the appeal is partly allowed. No Costs.

(R.S.M., J.) (R.K.M., J.)
07.07.2023

rkm
Index:yes/no
Speaking/Non-speaking
Neutral citation: yes/no

To

Motor Accident Claims Tribunal,
District and Sessions Court,
Dharmapuri.

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