THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

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

C.M.A.No.1868 of 2023
and
C.M.P.No.18234 of 2023

M/s. Reliance General Insurance Co. Ltd.,
Reliance House,
No.66, Haddows Road,
Chennai – 600 005. ...Appellant

Vs.

1.A.Arjun

2.Malaisamy ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.3047 of 2019, dated 16.11.2022, on the file of MACT, Chennai, II Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents : Mr.K.Balaji for R1
R2 – Notice dispensed with

JUDGMENT

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

Considering the narrow scope of the appeal, we have taken up the appeal in admission stage itself. Notice to the 2nd respondent is dispensed with as unnecessary.

2. The Insurance Company is on appeal on the quantum alone. The claimant sought for a compensation of a sum of Rs.25,00,000/- for the injuries suffered by him, in a road accident that occurred on 02.10.2018, when the motorcycle bearing Reg.No.TN-20-BJ-4761, which he was riding collaided against the stationery goods vehicle (TATA ACE) bearing Reg.No.TN-22-BE-8031, which was parked adjacent to the centre median. Terming the act of parking on the middle of the road as negligent act, which contributed to the accident, the claimant sought for compensation from the Insurer of the goods vehicle. As a result of the accident, the claimant suffered Right Clavicle Fracture/ Right Leg both Bone Fracture, Left Orbital Wall, Left Zygomatic Bone and Maxillary Sinus Fracture and Tracheostomy was done on 06.10.2018. The petitioner underwent treatment for a period of 20 days in a Speciality Hospital. He was also on treatment continuously for almost two months thereafter.

3. The Medical Board assessed the disability at 90%. The Tribunal took the monthly income of the deceased at Rs.15,656/-, added 50% towards future prospects and arrived at the monthly income at Rs.23,484/-. It took the functional disability at 90%, as suggested by the Board and applied the multiplier of 18 and arrived at the total pecuniary loss at Rs.45,65,290/-. It awarded other amounts towards conventional damages viz., pain and suffering, loss of earning during the treatment period, medical expenses, loss of amenities, attendant charges, transportation and extra nourishment. In all, the Tribunal arrived at Rs.54,91,670/- as just compensation. Aggrieved, the Insurance Company is on appeal.

4. We have heard Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company and Mr.K.Balaji, learned counsel appearing for the 1st respondent/ claimant.

5. Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would vehemently contend that fixation of 50% as future prospects is flawed, since the claimant was working in a private Company, He would also point out that the Medical Board has not taken into account the actual disability. According to him, the functional disability must be assessed on the basis of the occupation of the injured and not solely based on the physical disability. Pointing out that the injured claimant was a Computer Operator, Mr.M.B.Raghavan would submit that the loss of earning capacity may not be as much as 90% considering the nature of the injuries. He wouuld also point out that having applied the multiplier method, the Tribunal erred in granting a further sum of Rs.46,968/- towards loss of income during treatment. According to him, this will amount to double compensation for the same accident. We find some force in the contentions of the learned counsel for the Insurance Company.

6. Contending contra Mr.K.Balaji, learned counsel would submit that once the matter is referred to Medical Board and the Tribunal has accepted the suggestion of the Board, we should be slow to interfere in an appeal. He would also point out that the percentage of future prospects fixed by the Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi*** reported in ***2017 (2) TNMAC 609 (SC)*** are only suggestive and they are not mandatory. On the grant of Rs.46,968/- towards loss of earning during treatment, Mr.K.Balaji would submit that the learned counsel for the appellant is right in his contention.

7. We have considered the rival submissions. We have also gone through the discharge summary that has been marked as Ex.P4. We find from the said discharge summary that the injured was aged only 22 years at the time of the accident and there is every possibility of the fracture getting fixed and the disability may not be an enduring disability. We also find that except the fracture in both bones in right leg, the other fracture of Clavicle bone and Zygomatic Bone and Maillary Sinus fracture may not result in a huge disability. We are therefore of the considered opinion that the functional disability could be taken to be 70%, considering the occupation of the injured.

8. The Tribunal was not right in adding 50% towards future prospects. The dictum of Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi*** referred to *surpa* cannot be taken as suggestive it is binding on us. Therefore, adding 50% towards future prospects cannot be justified and it has to be reduced to 40%.

9. The award on the head of loss of earning during treatment will have to be necessarily set aside. We find that the awards under other heads viz., loss of amenities, attendant charges and extra nourishment are reasonable and the award for medical expenses has been granted on bills. Hence, we do not see any ground to interfere with the said quantum.

10. If we take monthly income at Rs.15,000/- adding 40% towards future prospects, the monthly income would be Rs.21,000/- and the annual income would come to Rs.2,52,000/-. If we apply the multiplier of 18 and adopting 70% disability, the total loss of earning capacity would be Rs.31,75,200/-, adding up the other sums granted under various heads, the total award works out to Rs.40,54,612/- and the same is rounded off to Rs.40,55,000/-.

11. In view of the above the appeal is **partly allowed,** award of the Tribunal is modified, granting a sum of Rs.40,55,000/-. The claimant will be entitled to 7.5% interest as awarded by the Tribunal. The Insurance Company will have eight (8) weeks time to deposit the award amount and on such deposit the claimant will be entitled to withdraw the same. No costs. Consequently, the connected miscellaneous petition is closed.

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

18.08.2023

dsa

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

To

The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

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

dsa

C.M.A.No.1868 of 2023

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