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C.M.A.No.3192 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3192 of 2017
and C.M.P.No.19628 of 2017

M/s.Reliance General Insurance Co.Ltd
Reliance House, 6th Floor
Nungambakkam
Chennai – 600 006

.. Appellant

Versus

1.M.Murugan
2.T.Srinivasan

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai made in M.C.O.P.No.6620 of 2013 dated 29.04.2017.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance for R1

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai made in M.C.O.P.No.6620 of 2013 dated 29.04.2017.



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2.The Insurance Company is the Appellant herein seeking to challenge the award passed by the Tribunal in M.C.O.P.No.6620 of 2013 on the ground of quantum.

3. The first respondent is the driver of the offending vehicle and the second respondent is the owner of the offending vehicle. The second respondent is set exparte before the Trial Court, hence, notice to the second respondent is dispensed with. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. During the trial before the Tribunal, the Claim Petitioner was examined himself as PW1. Ex.P1 to P12 were marked. Ex.P1 is the AR Copy, Ex.P2 is the Discharge summary from the Malar Hospital, Ex.P5 is the medical bill, Ex.10 is the FIR in Crime No.180/CH3/2013 & Ex.P11 is the Disability Certificate of the claimant. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle and had sustained grievous injuries, accordingly, fixed the negligence liability both



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on the owner of the offending vehicle and the Appellant Insurance Company.

Considering the age of the petitioner, i.e., 30 years, as per the claim petition, the Trial Court fixed the notional income as Rs.8,000/- per month. As the multiplier for 30 years of age is 17, it fixed the total loss of dependency to the claim petitioner as Rs.4,89,600/- (i.e., $8000 \times 12 \times 17 \times 30\%$ (functional disability) = Rs.4,89,600). Furthermore, the Trial Court granted Miscellaneous expenses as Rs.50,000/-, medical expenses at Rs.3,98,630/-, future medical expenses at Rs.10,000/-, Rs.20,000/- for attender charges, loss of earning during the period of treatment as Rs.16000/-, Rs.50,000/- as damages for pain, suffering and trauma as a consequence to the injuries, Rs.20,000/- as loss of amenities, totalling to the tune of Rs.10,54,230/-.

5.The learned counsel for the Appellant Insurance Company vehemently contended that the Tribunal has erroneously assumed 30% loss of earning power, contrary to the judgment of the Hon'ble Supreme reported in (2011) ACJ 1 and in the absence of any proof towards avocation and earning, it has fixed the notional income as Rs.8000/-. Hence, seeks this Court to set aside the multiplier method adopted by the Tribunal and reduce the monthly income as



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the accident is of the year 2013.

6. Heard Mr.S.Arun Kumar, learned counsel for the Appellant Insurance Company and perused the materials placed on record.

7. Considering the facts and also taking note of the plea raised by the Insurance Company that at the time of accident, the deceased rode the two wheeler carelessly and met with the accident. Therefore, the carelessness of the deceased riding two wheeler on the date of accident, assumes significance.

8. In view of above, this Court is of the considered view that the multiplier method adopted by the Tribunal should be set aside and the same is hereby set aside; and as the accident is of the year 2013, the notional income of the claim petitioner is hereby fixed as Rs.3,000/-; however, the functional disability is enhanced at 50%. Accordingly, the award amount is modified as below:

<i>Calculation</i>	<i>Rs.</i>
Transportation, nourish food and miscellaneous expenditure	Rs.50,000/-
Medical Expenses	Rs.3,98,630/-



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Calculation	Rs.
Future medical expenses	Rs.10,000/-
Attender charges	Rs.20,000/-
Loss of future earning capacity/power (Rs.3000x12x50%(functional disability))	Rs.18,000/-
Loss of earning during the period of treatment (Rs.3000(notional income) x 2 months)	Rs.6,000/-
Damages for pain, suffering and trauma	Rs.50,000/-
Loss of amenities	Rs.20,000/-
Total compensation is hereby fixed at	Rs.5,72,630/-

6. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded is reduced from Rs.10,54,000/- to Rs.5,72,630/-. The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the Appellant insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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(iii) On such deposit being made, the claimant is permitted to withdraw his share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) If at all the Appellant Insurance Company had already deposited the awarded compensation amount, after satisfaction of the award, the Tribunal is directed to refund the surplus deposited money taking note of the reduced compensation amount herein, to the Appellant Insurance Company.

07.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

The Presiding Officer,
Motor Accidents Claims Tribunal
II Court of Small Causes,
Chennai



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A.A.NAKKIRAN, J.

dhk

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