



C.M.A.(MD)No.348 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.348 of 2019

and

C.M.P(MD)Nos.4318 and 11375 of 2019

Branch Manager,
Reliance General Insurance Company Limited,
HIG-55, 80 Feet Road,
Annanagar,
Madurai-625 020.

.. Appellant/2nd Respondent

Vs.

1. C.Bhoopathi @ Govindasamy

.. Respondent No.1/Petitioner

2. A.Muruganantham

.. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 03.05.2018 made in M.C.O.P.No.1889 of 2015 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Madurai.



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For Appellant : Mr.V.Sakthivel

For Respondents : Mr.S.Sangeetha
for R1

: No appearance for R2

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

This appeal is filed by the Insurance Company on the ground that the accident victim who was a pillion rider in the two wheeler was not wearing his headgear at the time of accident and therefore, he has contributed to the injury. Further, even according to the Medical Board, disability was only 81%. However, the Tribunal has taken 100% functional disability and passed the award. Therefore, on negligence as well as on quantum, the award of the Tribunal is put under challenge.

2. Heard the learned counsel on both side and perused the records placed before this Court.



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3. The learned counsel appearing for the first respondent accident victim would submit that on 21.03.2015, at about 9.30 p.m., when the victim was travelling on the pillion in the two wheeler driven by one Ganeshkumar, the vehicle dashed the parapet wall on the overbridge in which the claimant had sustained severe injury and got admitted in the Madurai Meenakshi Mission Hospital. He was treated as inpatient for several days. The accident has caused permanent disability of 81% as per the opinion of the Medical Board. The entire lower part of his body was paralysed till date. He, being a driver by profession earn Rs.10,000/- per month at the time of accident, has incurred 100% functional disability and therefore, the award of Rs.22,78,563/- granted by the Tribunal is appropriate and same to be confirmed.

4. The accident and injury as noted by the Board is not in dispute. The Insurance Company has a grievance only regarding the failure of the Tribunal not deducting the contributory negligence and assessing the loss of income taking 100% functional disability. On perusing the evidence on record, we find that the claimant was 24 years at the time of the accident and he was driver by profession. No doubt, he was not wearing helmet at the time of accident, but Section 129 of the Motor Vehicles Act mandates only the rider of



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the two wheeler to wear helmet and not the person, who is on the pillion.

Though it is conditional and advisable if any pillion rider can also wear helmet, the statute does not mandate. It cannot be taken as a contributory negligence. Regarding the assessment of loss of income, considering the 81% disability assessed by the Board, the Tribunal has taken as 100% functional disability since the claimant has lost sensation below the hip due to this accident. Therefore, he is not able to carry out his day-to-day affairs, more particularly, his avocation, ie., driving. Since he being a driver by profession and unable to carry on his profession by this accident, certainly, it has to be construed as 100% functional disability. Hence, this Court finds no error in the assessment made by the Tribunal for fixing compensation.

5. In the result, this Civil Miscellaneous Appeal is dismissed and the judgment and decree, dated 03.05.2018 made in M.C.O.P.No.1889 of 2015 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Madurai, is confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.



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6. The appellant insurance company is directed to deposit the entire award amount along with the accrued interest and costs to the credit of M.C.O.P.No.1889 of 2015 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Madurai, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by filing appropriate application before the Tribunal.

[G.J., J.] & [K.K.R.K., J.]
10.02.2023

Index : Yes/No
Internet : Yes
PJJ

To
The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

PJL

Judgment made in
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10.02.2023