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C.MA.No.530 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.530 of 2021
and
C.M.P.No.3380 of 2021

The Manager,
Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, Bharathi Street,
Omalur Main Road,
Swarnapuri, Salem.

...Appellant

Vs.

1.Arunkumar
rep. by NFNG father Manokaran

2.M.Elango

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 12.07.2019 passed in MCOP.No.246 of 2015 by the Motor Accident Claims Tribunal, Special Sub-Court No.II at Salem.

For Appellant : Mr.C.Bhuvanasundari

For Respondents : Mr.C.Thangaraju for R1
R2 - not ready in notice



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J U D G M E N T

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

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The Insurance Company is on appeal, contending that the quantum of compensation awarded to the injured claimant in MCOP.No.246 of 2015 is on the higher side. The claimants sought for a compensation of Rs.1,00,00,000/- for the injuries suffered by him in a motor accident that occurred on 20.10.2014.

2. According to the claimant, while he was riding his Royal Enfield Motor cycle bearing Registration No.TNL-7292 near Chithode, the rider of the another two wheeler bearing Registration No.TN-33-BE-0307 rode it in a rash and negligent manner and dashed against the claimant's vehicle resulting in severe head injuries to the claimant. As a consequence of the injuries, the claimant has become bedridden and totally unfit of carrying any avocation. This has resulted in 100% loss of earning capacity. The claimants sought to support the quantum of compensation by contending that he was earning about Rs.12,000/- per month and he has spent several lakhs of rupees for treatment.

3. The claim was resisted by the Insurance Company contending that



the motor cycle in which the claimant was riding did not have insurance and the negligence has been shifted to the rider of the motor cycle bearing Registration No.TN-33-BE-0307 only with a view to extract compensation.

It was also contended that the claimant was not wearing a helmet and therefore, he was also contributed to the accident. The extent of the injury and the consequential disability was also denied by the Insurance Company.

4.At trial, before the Tribunal, the next friend and father of the claimant was examined as P.W.1. The pillion rider was examined as P.W.2 and Dr.Prabhu, Neurologist was examined as P.W.3. Exs.P1 to P8 were marked on the side of the claimant. There was no evidence let in on the side of the respondents.

5.In the absence of any evidence on the side of the respondents, the Tribunal took into account the evidence of eye-witness / P.W.2, the pillion rider and the contents of Ex.P1 & P4 namely, the First Information Report and charge sheet and conclude that the accident has happened due to the rash and negligent manner driving of the TVS XL motor cycle bearing Registration No.TN-33-BE-0307.



6. On the quantum, the Tribunal took the monthly income at

Rs.8,000/- and applied the multiplier of 16, added 40% towards future prospects and arrived at the total loss of earning power at Rs.21,50,400/-.

The Tribunal also granted the following amounts under various other heads:-

<i>Heads</i>	<i>Amounts</i>
For pain and suffering	Rs.3,00,000/-
For loss of amenities	Rs.3,00,000/-
For medical expenses (As per Ex.P7 series)	Rs.21,21,393/-
For future medical expenses	Rs.4,00,000/-
For transportation	Rs.50,000/-
For extra nourishment	Rs.2,00,000/-
For attender charges (Rs.5,000/- from 20.10.2014 till 12.07.2019) (Rs.5,000/- x 56+ approximate future expenses Rs.2,00,000/-)	Rs.4,80,000/-
For damages to clothes	Rs.1,000/-

Thus, the total compensation arrived at by the Tribunal worked out to Rs.60,02,793/-. Aggrieved, the Insurance Company is on appeal mainly contending that the quantum of compensation is on the higher side and there was no evidence for the disability that was assumed at 100% by the Tribunal.



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7. We found that though there was a reference to Ex.C1 / disability certificate issued by the Medical Board in the award of the Tribunal, the said certificate was not available in the records. We therefore, summoned the records from the Tribunal and upon examination of the records, we found that Ex.C1 was not at all marked. Hence, we direct the claimant to appear before the Medical Board at Government Mohan Kumaramangalam Medical College Hospital, Salem by our order dated 16.11.2023. Pursuant to our order, the claimant had appeared before the Medical Board of Government Mohan Kumaramangalam Medical College Hospital, Salem and the Medical Board had issued a disability certificate, certifying that the claimant had suffered head injuries and he is in “persistent vegetative state”, the disability has been assessed at 100%. In view of the said medical report, we conclude that the Tribunal was justified in taking the disability at 100% .

8. As regards the quantum of compensation, the Tribunal has taken the monthly income at Rs.8,000/- for the accident in the year 2014, which cannot be said to be unreasonable. The compensation granted under the other heads also is reasonable, considering the nature of injuries and the fact that the petitioner who was 32 years old at the time of the accident has to

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lead the rest of his life in bed. We therefore, do not find any reason to interfere with the quantum of compensation awarded by the Tribunal.

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9. On the question of negligence also we find that the First Information and the charge sheet are against the owner of the TVS XL Motor cycle. The contents of those documents was buttressed by evidence of P.W.2 / eye-witness. The respondent has not placed any evidence to dislodge the effect of the evidence of P.W.2 and documents marked as Exs.P1 and P4. In the absence of any evidence on the side of the respondents, we do not think, we can interfere with the findings of the Tribunal on the question of negligence. Hence, this Civil Miscellaneous Appeal fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (R.S.V., J.)
22.03.2024

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Index :No
Internet :Yes
Neutral Citation :No
Speaking

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To

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The Motor Accident Claims Tribunal,
Special Sub-ordinate Judge - II,
Salem.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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