



Civil Miscellaneous Appeal No.1621 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1621 of 2024
and CMP No.13341 of 2024

Reliance General Insurance Company Ltd.,
No.19, Reliance Centre,
Walchand Hirachand Marg,
Ballard Estate, Mumbai,
Maharashtra – 400 001

... Appellant

Vs.

1. G.Gokulakrishnan

2. R.Balu

3. S.R.Muhammed Haarish

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the judgement and decree dated 06.11.2023 passed in M.C.O.P.No.398 of 2017 on the file of MACT Special District Judge, Erode.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.R.Nalliyappan for R1



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JUDGMENT

The Insurance Company aggrieved by the award passed by the MACT Special District Judge, Erode in M.C.O.P.No.398 of 2017 dated 06.11.2023, has filed this appeal questioning the quantum of compensation fixed by the Tribunal.

2. The 1st respondent / claimant filed the claim petition on the ground that on 09.05.2017, he was riding his two wheeler at Erode to Sathy road and at about 10.30 p.m, the offending vehicle which was a two wheeler was driven in a rash and negligent manner and it came in the opposite direction and it dashed on the two wheeler ridden by the claimant. As a result, the claimant sustained the following injuries :-

1. Type III B open radius segmental right
2. Right distal ulna dislocation
3. Fracture right II metacarpal
4. Fracture right proximal phalanx little finger
5. Left Zygomatic co-maxillary complex fracture
6. Fracture medial malleous right ankle



7. Fracture open I, IV metatarsal right

8. Right foot crush injury

3. The claimant underwent treatment as an in patient for nearly 42 days. The following treatment was given to the claimant:-

- Wound debridement and suturing done in right foot
- Radius plate II Medial middle “k” wire right foot
- ORIF done for Fracture Left zygomatic maxillary complex
- SSG done for post traumatic raw area right foot.

4. The medical board assessed the partial permanent disability as 59%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

5. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to determine the total



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compensation payable at Rs.16,73,358/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Compensation for 25% functional disability	Rs.9,45,000/-
2.	Compensation for pain and sufferings	Rs.1,35,000/-
3.	Compensation for transport, attender charges and nourishment during inpatient treatment	Rs. 20,000/-
4.	Compensation for medical expenses	Rs.5,13,358/-
5.	Compensation for loss of amenities	Rs. 60,000/-
	Total compensation	Rs.16,73,358/-

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

6. The insurance company aggrieved by the quantum of compensation fixed by the Tribunal, has filed this appeal.

7. Heard Mr.P.Suresh Srinivasan, learned counsel for appellant and Mr.R.Nalliyappan for learned counsel for 1st respondent.



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8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The main ground that was urged by the learned counsel for appellant is that there was absolutely no evidence available before the Tribunal to show that the claimant suffered from any functional disability. Therefore, it was contended that the Tribunal ought to have applied the per percentage method. The learned counsel further submitted that there was absolutely no proof regarding the income earned by the claimant and whereas, the Tribunal proceeded to fix the notional monthly income at Rs.15,000/-, which is clearly on the higher side.

11. Per contra, the learned counsel for claimant submitted that the Tribunal had taken into consideration the injuries sustained by the claimant, the treatment that was given to him, the after effects of the



12. The injuries that were sustained by the claimant and the treatment that was given to the claimant has already been extracted supra. The Tribunal had recorded in its order that the right feet from knee downwards has been disfigured and distorted and the claimant had difficulty in balancing while standing. The Tribunal also considered the avocation of the claimant where the claimant has to do the marketing job for which he has to ride his two wheeler. Considering all these aspects, the Tribunal has fixed the functional disability at 25% and also an equal extent for loss of earning power. This finding of the Tribunal does not suffer from any illegality, warranting the interference of this Court.

13. Insofar as the monthly notional income is concerned, the



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Tribunal has fixed a sum of Rs.15,000/- since the accident had taken place in the year 2017 and the same is definitely not on the higher side and it does not require the interference of this Court.

14. In the result, this Civil Miscellaneous appeal stands dismissed. The appellant insurance company is directed to deposit the entire compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, the connected miscellaneous petition is closed.

11.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To,
MACT Special District Judge, Erode.

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