THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

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

C.M.A.Nos.890 & 2791 of 2023
and
C.M.P.No.8255 of 2023

C.M.A.No.890 of 2023:

The Manager,
Reliance General Insurance Company Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai – 600 006. ... Appellant

Vs.

1.G.Nataraj

2.S.Selvi ... Respondents

Prayer in C.M.A.No.890 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of Award dated 09.12.2022 passed in MCOP.No.280 of 2019 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Cuddalore.

For Appellant	:	Mr.G.Vasudevan
For Respondents	:	Mrs.Ramya V. Rao for R1
		R2 – No appearance

C.M.A.No.2791 of 2023:

G.Nataraj ... Appellant

Vs.

1.S.Selvi

2.The Manager,
Reliance General Insurance Company Ltd.,
Reliance House 6th Floor,
6, Haddows Road, Nungambakkam,
Chennai – 600 006. ...Respondents

Prayer in C.M.A.No.2791 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in MCOP.No.280 of 2019 dated 09.12.2022 on the file of the Motor Accident Claims Tribunal/ Principal Sub-Judge, Cuddalore.

For Appellant : Mrs.Ramya V. Rao
For Respondents : R1 – dispense with
Mr.G.Vasudevan for R2

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COMMON JUDGMENT

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

Both the Insurance Company and the claimant have come up with the appeals. While the Insurance Company challenges the quantum of compensation awarded the claimant seeks enhancement.

2. The claimant sought for a compensation of Rs.50,00,000/- for the injuries and the permanent disability sustained by him in a motor accident that occurred as on 15.10.2018.

3. According to the claimant, when he was riding his motor cycle bearing Reg.No.PY-01-BB-5152 at a moderate speed, following traffic rules, a medium goods vehicle belonging to the 1st respondent bearing Reg.No.TN-16-B-3544 driven in a rash and negligent manner by its driver came in the opposite direction and dashed against the claimant's motorcycle. As a result, the claimant suffered multiple grievous injuries resulting in amputation of the right leg above the knee. Claiming that he was working as Mason, earning at least Rs.20,000/- per month and he has been permanently disabled from continuing his work as Mason resulting in loss of earning capacity, the claimant sought for a compensation of Rs.50,00,000/-.

4. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimant. The claimant contributed to the accident due to his own negligence. It was also contended that the claimant was not wearing a helmet.

5. At trial, before the Tribunal the petitioner was examined as PW1 and Exs.P1 to P15 were marked. No evidence was let in on the side of the respondent before the Tribunal. The Disability Certificate issued by the Medical Board of the Cuddalore District Headquarters Hospital was marked as Ex.C1.

6. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the van. The Tribunal took into account the fact that the First Information Report was registered against the driver of the van and charge sheet was also filed against him. It also fathomed the fact that the Insurance Company or the owner of the vehicle did not choose to let in any evidence before it. On arriving at the conclusion regarding negligence, the Tribunal held that the Insurance Company being the Insurer of the van is liable to pay the compensation.

7. On the quantum, the Tribunal took the monthly income of the deceased at Rs.12,000/- + 40% towards future prospects and adopted the multiplier of '18'. On the evidence available to the effect that the claimant was about 24 years old on the time of the accident, and fixed the compensation for loss of earning capacity due to partial permanent disability at Rs.27,21,600/-. It also awarded the following compensation on various heads,

For Transport to Hospital	:	Rs.50,000/-
For Extra Nourishment	:	Rs.30,000/-
For Attender's Charge	:	Rs.30,000/-
For Pain and sufferings, mental agony	:	Rs.1,00,000/-
For Loss of amenities	:	Rs.1,00,000/-
For Medical Expenses (Ex.P6)	:	Rs.10,752/-

For Temporary loss of Income : Rs.72,000/-

8. Thus, the Tribunal awarded the total compensation at Rs.31,34,352/-. Hence, these appeals.

9. While Mr.G.Vasudevan, learned counsel appearing for the appellant Insurance Company would contend that the Tribunal has not taken into account the fact that the claimant was not wearing helmet at the time of the accident and the percentage of disability fixed is also on the higher side. He would also point out that the Tribunal has adopted the multiplier '18' when the age of the claimant is given as 28 years even in the claim petition. According to him, the multiplier should have been '17'. He would also urge that fixing of Rs.12,000/- per month as notional income is on the higher side.

10. Contending contra, Mrs.Ramya V.Rao, learned counsel appearing for the claimant would submit that the fact that the claimant was Mason was not denied and the accident having occurred in the year 2018, the Tribunal erred in fixing Rs.12,000/- as notional income. According to her, a Mason would easily earn anything around Rs.1,000/- per day. Even if the claimant had worked for 20 days per month, he would have earned Rs.20,000/-. Therefore, according to her, fixation of Rs.12,000/- as monthly notional income is abysmally low. She would also point out that though the age of the claimant was given as 28 years in the claim petition, the Transfer Certificate of the claimant has been filed as Ex.P14 and it would go to show that the claimant was aged around 24 years at the time of the accident. Therefore, adoption of multiplier as '18' cannot be said to be wrong.

11. On the contention that the claimant was not wearing helmet, the learned counsel would submit that though non-wearing of helmet is a negligent act, the nature of injuries suffered would show that non-wearing of helmet did not have any impact on the injuries suffered by the claimant. Hence, according to her, the Tribunal was justified in not deducting any amount for non-wearing of helmet.

12. We have considered the rival submissions.

13. Since the Insurance Company had not chosen to let in any evidence, on the available evidence on record viz., the First Information

Report, the accident register as well as the final report filed in Crime No.85 of 2018, which implicates the driver of the van as the cause for the accident, we do not think we can fault the Tribunal for having come to the conclusion that the accident occurred due to the negligence of the driver of the van. As the insurer of the van the Insurance Company is liable to pay the compensation.

14. As regards the percentage of disability, the claimant has appeared before the Medical Board and the Medical Board has issued a certificate assessing the disability at 75%. Considering the fact that the claimant was working as Mason and he has lost a lower limb, we are of the considered opinion that this 75% disability would translate into loss of earning power. We therefore affirm the conclusion of the Tribunal that the claimant would be entitled to a compensation on multiplier method for the permanent disability caused to him.

15. On the quantum, we find that adoption of Rs.12,000/- per month by the Tribunal as monthly notional income is very low. Considering the fact that the claimant was a Mason we are unable to reject the argument of the learned counsel for the claimant that he would have easily made Rs.20,000/- per month. At the same time, we will have to also take into account the fact that the claimant was a self-employed person and he would not have worked all 30 days in a month. Therefore, we take the monthly notional income at Rs.15,000/-. If we are to add Rs.6,000/- towards future prospects (40%) the monthly income would come to Rs.21,000/-. The Transfer Certificate shows that the claimant was aged around 24 years therefore the multiplier that is to be taken is '18'. Thus, calculated the compensation for loss of earning power would be Rs.21,000/- x 12 x 18 x 75% = Rs.34,02,000/-. We confirm the compensation awarded under the other heads, except the compensation for temporary loss of income awarded at Rs.72,000/- at Rs.12,000/- per month. This head is a duplication, in view of the fact that the compensation for loss of income has been awarded using multiplier method. Therefore, the claimant would be entitled to a sum of Rs.37,22,752/- as the total compensation, which we round off to Rs.37,23,000/-. The interest awarded at 7.5% by the Insurance Company is confirmed.

16. In fine the appeal in C.M.A.No.2791 of 2023 is partly allowed granting a sum of Rs.37,23,000/- as compensation and the appeal in C.M.A.No.890 of 2023 is dismissed. The parties are directed to bear their own costs in both the appeals. It is seen that the Insurance Company has deposited the entire compensation awarded by the Tribunal. The claimant is permitted to withdraw the same. The Insurance Company will have eight weeks time from the date of receipt of a copy of the order to deposit the balance amount along with proportionate interest. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
12.07.2024

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

To

The Principal Sub-Judge,
Motor Accident Claims Tribunal,
Cuddalore.

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

dsa

C.M.A.Nos.890 & 2791 of 2023

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