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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2827 of 2024
and
C.M.P.No.23278 of 2024

Reliance General Insurance Company Ltd.,
Having its Branch Office at,
3rd Floor, Sakthi Super Market,
Building, No.408, Perundurai Road,
Erode - 638 011,
Erode Town, Erode Taluk,
Erode District. ..Appellant

Vs.

1. M. Karthi

2. S. Mallika ..Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 03.10.2023 passed in M.C.O.P.No.297 of 2022 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Erode.

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For Appellant : Mr.P.Suresh Srinivasan

JUDGMENT

(Judgment of the Court was delivered by **J.Nisha Banu, J**)

This Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company challenging the judgment and decree dated 03.10.2023 passed in M.C.O.P.No.297 of 2022 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Erode.

2. The brief facts of the case of the claimant are as follows.

The claimant sustained injuries in a road accident on 16.03.2022 at about 12.45 p.m. He was riding a motorcycle bearing registration No.TN 29 AE 2712 on the Walayar gate to Tiruchengode Road, from south to north direction, nearing Nallaiyagounder's complex, at that time, the driver of Bolero Pickup Van bearing Registration No.TN 46 F 3515 came from opposite direction, in a rash and negligent manner dashed against the claimant. As a result, the claimant fell down and sustained multiple fracture and grievous injuries. Immediately, he was taken to the Government Hospital at Tiruchengode and then to Krishna Multispeciality Hospital and then brought to 24 Care Hospital, Erode and took treatment as inpatient. The claimant was aged 27 years at the time

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of accident and was hale and healthy. He was doing labour work and was earning a sum of Rs.25,000/- per month. Hence, he claimed a sum of Rs.1,00,00,000/-. The 1st respondent in MCOP/driver, the 2nd respondent/ owner of the vehicle and the 3rd respondent/ insurer of the offending Vehicle-Bolero Pick-up Van are jointly and severally liable to pay compensation. Hence, the claim petition.

3. Before the Tribunal, the appellant/ Insurance Company filed a counter statement denying the allegations made by the claimant. They would state that the accident had happened only due to the carelessness of the rider of the motorcycle. At the time of accident, the injured failed to wear the headgear and failed to follow the motor vehicles rules.. Therefore, they are not liable to pay any amount to the claimant.

4. The 1st respondent before the Tribunal viz., driver of the Bolero Pickup Van, died. The same was recorded by the Tribunal in the order passed in I.A.No.3/2023 dated 17.03.2023.5. The Tribunal has also recorded in the award that the 1st respondent being driver and the 2nd respondent being owner of the offending vehicle Bolero Pickup Van have not chosen to contest the case and remained exparte.

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5. Before the Tribunal, the claimant/1st respondent herein was examined as P.W.1, and marked ten exhibits viz., Exs.P1 to P10. On the side of the respondents, no evidence was examined and no exhibits were marked.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the Insurance company is liable to indemnify the owner of the van and to pay the compensation to the injured and awarded a compensation of Rs.27,59,000/- with interest at the rate of 7.5% per annum. Aggrieved by the same, the present Appeal by the Insurance Company.

7. Learned counsel appearing for the appellant/Insurance Company would state that there was no eye witness to establish and fix the negligence on the part of the driver of insured and the lower Court should have applied the principle of contributory negligence but have not done so. The disability given by the Medical Board is 45% and the lower Court has taken the loss of earning as 45% itself. Learned counsel would further state that the Tribunal failed to differentiate between the physical disablement and loss of earning capacity.

8. Learned counsel would further state that the income of the

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deceased fixed as Rs.11,000/- per month is without any basis and is on the higher side. The lower Court awarding a sum of Rs.10,10,000/- towards loss of earning power is on surmises and conjectures. The alleged medical bills are not proved in accordance with law by producing the concerned receipts in proof of payment. He would further state that the Tribunal has erred in granting interest at the rate of 7.5% in favour of the claimants. Therefore, he would state that the award passed by the Tribunal is excessive and without any basis and the same is liable to be set aside.

9. Heard the learned counsel for the appellant and perused the materials available on record.

10. From the materials available on record, it could be seen from Ex.P1-FIR that the driver of Bolero Pickup Van was shown as accused. Charge sheet was laid as against the driver of the said Van. Further, the evidence of P.W1 remained unchallenged. Therefore, the Tribunal concluded that it was the driver of the Bolero Pickup Van who caused the accident and fixed the negligence on the driver of the said Van. Further, it could be seen from the records that the injured sustained grievous injuries all over the body. He sustained head injury and bone

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fracture and was admitted in 24 Care Hospital, Erode, from 16.03.2022 to 17.05.2022 which is corroborated through Ex.P3 Discharge summary. It was stated that the claimant was doing labour work and was earning a sum of Rs.25,000/- per month. But the claimant has not produced any document to prove the same. Since the injured was aged about 27 years at the time of accident which was also not disputed by the respondent and considering the age, the Tribunal had taken a notional income as Rs.11,000/-. The claimant sustained 45% disability. It was stated that he could not continue his earlier occupation as labour. He has no sensation of urine and moving in wheel chair. Thus, the Tribunal has taken the 45% disability as 100% functional disability and applying the multiplier, according to age, awarded a sum of Rs.10,10,000/- for permanent disability and loss of earning power, with which, we do not find any error in the said finding of the Tribunal.

11. We are also of the view that the amount awarded by the Tribunal towards transport expenses, extra nourishment, attender charges, future medical expenses, damages for clothes and articles, medical expenses and pain and suffering are just and reasonable. Therefore, we find no infirmity or illegality in the award passed by the

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Tribunal.

12. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.27,59,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest at the rate of 7.5% and costs, is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.297 of 2022 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Erode. On such deposit, the 1st respondent is is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B,J.) **(R.K.M., J.)**
17.10.2024

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The Motor Accident Claims Tribunal
(Special Subordinate Judge),
Erode.

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