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C.M.A.No.1932 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1932 of 2022

TATA AIG General Insurance Company Ltd.,
Peninsula Business, Park Tower,
A, 15th Floor, G.K. Marg,
Lower Parel, Salem.

... Appellant

Vs.

1. Mariyappan
2. M.Thangarasu

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 to set aside the award 15th day of February, 2022 made in M.C.O.P.No.285 of 2020, on the file of Motor Accident Claims Tribunal, Special Subordinate Court, (MACT), Dharmapuri.

For Appellant : Mr.K.Vinod

For R1 & R2 : No appearance

Amicus Curiae : Dr.B.Ramaswamy
(Respondents)

JUDGEMENT



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This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the negligence as well as the quantum of compensation.

2. In the present case, the contention of the appellant/Insurance Company is that the rider of the Royal Enfield motor cycle was riding his vehicle behind the Ashok Leyland Dost, who drove the vehicle in a rash and negligent manner and suddenly turned towards the right side of the road which led to the occurrence of the accident.

3. Dr.B.Ramaswamy, Amicus Curiae appearing for the respondents would submit that as per the report, the rider of the two wheeler driven the vehicle carefully by taking all the precautionary measures, this accident would have been avoided. Further, he contented that only due to rash and negligent driving by the rider of the two wheeler, this accident had occurred.

4. Taking into consideration the facts and circumstances of the case and the submissions made by the learned Amicus Curiae, this Court is



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of the considered view that while the four wheeler was turning to right, the rider of the two wheeler has to take precautionary measure and ought to have ridden the vehicle slowly and carefully. Since, he drove the vehicle in a rash and negligent manner, the accident was occurred. Therefore, this Court agrees that there is rash and negligence on the part of the rider of the two wheeler. Hence, this Court is inclined to fasten the entire liability on the rider of the two wheeler and confirm the order of the Court below in this aspect.

5. With regard to the challenge to the quantum of compensation is concerned, the Tribunal fixed the notional income at Rs.6,000/- per month and the Medical Board fixed the functional disability at 61% and the Tribunal has taken the entire disability at 61% and awarded the compensation.

6. The learned Amicus Curiae appearing for the respondents would submit that the accident was occurred in the year 2018 and the Tribunal fixed notional income at Rs.6,000/- per month, which is on the lower side. Therefore, he contented to fix the notional income at minimum of



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Rs.15,000/- per month. He would further submit that the functional disability may be taken as 50% instead of 61% while fixing the notional income at Rs.15,000/-.

7. The learned counsel appearing for the Insurance Company would fairly submit that in the event of fixing Rs.15,000/- as notional income, 61% functional disability fixed by the Tribunal may be reduced to 50%, by which, the compensation awarded by the Tribunal would become reasonable and cannot be construed as higher side. Therefore, he fairly submitted that the compensation awarded by the Tribunal may be confirmed.

8. At this juncture, Dr.B.Ramaswamy, learned Amicus Curiae appearing for the respondent is reluctant to accept the submission made by the learned counsel for the appellant/Insurance company, however, he fairly submitted that since the appeal was filed by the Insurance Company, he agreed and urged this Court to confirm the award passed by the Tribunal.

9. Considering the facts and circumstances of the case and the



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submissions made by the learned Amicus Curaie and the learned counsel for the appellant/Insurance Company, this Court is inclined to confirm the award passed by the Tribunal. Therefore, the appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal to the credit of M.C.O.P.No.285 of 2020, Special Subordinate Court, Dharmapuri, along with interest from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is later.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

This Court places its appreciation towards the assistance rendered by DR.B.Ramaswamy, Amicus Curaie in this matter.



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Index : Yes / No
NCC : Yes / No
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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court, (MACT), Dharmapuri.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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