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C.M.A.No.2618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2618 of 2021

and

C.M.P.No.15008 of 2021

Reliance General Insurance Co. Ltd.,
19, Reliance Centre, Walchand Hirachand Marg,
Bollard Estate, Mumbai - 400 001.

... Appellant

Vs.

1. G.Bhoopalan
2.K.M.Ashok Reddy

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 11.03.2019 made in M.C.O.P. No.93 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri.

For Appellant : Mr.C.Bhuvanasundari

For Respondents : Mr.S.P.Yuaraj
for R1

for R2 - No Appearance



JUDGMENT

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This appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded by the Tribunal under the impugned award. The first respondent / claimant sustained closed fracture proximal 1/3rd right leg both bone and calcaneum as a result of an accident caused by a vehicle insured with the appellant. The nature of injuries sustained by the first respondent / claimant has not been disputed by the appellant Insurance Company. The Medical Board has assessed his disability at 30%.

2. The first respondent / claimant was employed as a conductor at the time of the accident which happened in the year 2012. Eventhough, the first respondent / claimant had claimed that he was earning a sum of Rs.15,000/- per month as salary at the time of the accident, the Tribunal under the impugned award has fixed the notional monthly income of the first respondent / claimant at Rs.6,000/- since no documentary evidence was produced by the first respondent / claimant to prove his monthly income. Since the accident happened in the year 2012, this Court is of the considered view that the Tribunal ought to have fixed the notional monthly income of



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the first respondent / claimant at a higher sum. However, the Tribunal has accepted the assessment of the disability of the first respondent / claimant at 30% based on the medical report, which has been marked as Ex.C1. Though on a *prima facie* consideration, the Tribunal ought not have assessed the loss of earning capacity by 30% as the permanent disability of the first respondent / claimant as the Medical Board Report, has assessed the disability of the first respondent / claimant only on partial permanent disability basis. Though the determination of 30% disability for the purpose of assessing the loss of earning capacity by the Tribunal may not be correct, this Court after giving due consideration to the year of the accident and the nature of injuries sustained by the first respondent / claimant is of the considered view that the overall compensation of Rs.7,83,306/- awarded by the Tribunal under the impugned award under various heads as detailed below is a just compensation which does not call for an interference from this Court:

- a. Medical Bills;
- b. Future medical expenses;
- c. Nutrition and attender charges;
- d. Pain and sufferings; and
- e. Transport expenses.



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3. After giving due consideration to the fact that the Tribunal has erroneously fixed the notional monthly income of the first respondent / claimant at Rs.6,000/- per month, eventhough for an accident that happened in the year 2012 even on notional basis, a minimum of Rs.9,000/- per month would have been fixed. Eventhough, the notional monthly income fixed by the Tribunal under the impugned award is low, since the claimant has not preferred any appeal, seeking for enhancement, this Court is not going to deal with the assessment of the notional monthly income of the first respondent / claimant. After giving due consideration to the overall compensation awarded by the Tribunal, this Court is of the considered view that the said compensation cannot be considered to be excessive as claimed by the appellant Insurance Company.

4. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.06.2024



C.M.A.No.2618 of 2018

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, Additional District and Sessions Court, Krishnagiri.
2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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