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C.M.A.No.2586 of 2024

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.2586 of 2024

in

C.M.P.No.20547 of 2024

M/s.Reliance G.I.Co., Ltd.,
Sakthi Super Market,
408, Perundurai Road,
Erode - 11.

..Appellant

Vs.

1. A.Senthil (unconscious)
S/o.Arjunan
(Rep. by next guardian
mother K.Pushpa W/o.Arjunan)

2. A. Ayyappan
S/o.Ayyavu

..Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award dated 17.08.2023 made in M.C.O.P.No. 1 of 2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode.



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For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.S.Kalyanaraman for R1

J U D G M E N T

(The judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

Today, the matter is posted under the caption 'for clarification'.

2. This Court, on 13.09.2024, partly allowed the appeal filed by the Insurance Company by reducing the amount in respect of 'extra nourishment' alone. However, before signing the order, this Court wanted to clarify whether the claimant is still unconscious and whether any cross objection has been filed by the claimant. It is brought to the notice of this Court that the claimant is still in unconscious stage and no Cross Objection has been filed. Therefore, the following order is passed.

3. This Civil Miscellaneous Appeal has been filed by the Insurance Company against the judgment dated 17.08.2023 passed in M.C.O.P.No.01 of 2020 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Erode, in which, an award was passed for a sum of Rs.32,47,000/- as compensation with interest @ 7.5% per annum to the 1st respondent herein and the Insurance Company was directed to recover the amount so paid from the owner of the vehicle/2nd respondent herein.



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4. The appellant is the Insurance Company. The claimant/ injured has filed the said claim petition claiming a sum of Rs.90,00,000/- as compensation for the accident that took place on 23.09.2019.

5. The claim petition has been filed stating that on 23.09.2019 at about 21.00 hrs, when the claimant was riding the motorcycle bearing registration No.TN-33-AE-7375 on the Nasiyanoor Road near Ganapathy Nagar Branch Road, i.e., West to east direction, at that time, the 2nd respondent herein drove a TVS Jupiter motorcycle, bearing registration No.TN 86-D-9874 came from Ganapathy Nagar Branch, i.e., south to north direction, in a rash and negligent manner and hit behind the 1st respondent/s moped. As a result, the 1st respondent, was thrown away and fell down and sustained grievous injuries. He was immediately taken to Government Hospital, Erode and thereafter, shifted to Sudha Hospital, Erode and took treatment as inpatient. The claimant was aged about 40 years at the time of accident and hale and healthy. He was working as Marketing Manager, Brill Traders, Dyes and Chemicals Sathi Road, Erode and was earning a sum of Rs.48,000/- per month. Therefore,



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claiming a sum of Rs.90,00,000/- against the the appellant/insurance company and the 2nd respondent/owner cum driver of the vehicle, the 1st respondent herein has filed the claim petition.

6. The appellant Insurance Company filed a counter statement before the Tribunal, denying the averments made in the claim petition stating that the claimant had no valid and effective driving license at the time of accident and hence, the insurance Company is not liable to pay any amount to the claimant. The accident had happened only due to the carelessness of the rider of the motorcycle. The rider of the motorcycle bearing registration No.TN 86 D 9874 drove the same in slow and steady manner following the traffic rules. At that time, the rider of motorcycle drove the motorcycle bearing Reg.No.TN 33 AE 7375 in a rash and negligent manner without following any traffic rules and in high speed from west to east direction and failed to notice the four way junction and he himself hit against the 1st respondent vehicle/2nd respondent herein and invited the accident. There is no negligence on the part of the 1st respondent/2nd respondent herein. The amount of compensation claimed by the injured is unsustainable. Hence, prayed to dismiss the claim



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petition.

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7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the driver of the TVS Jupiter motorcycle was negligent and caused the accident and that the Insurance company, the insurer of the vehicle is liable to pay compensation to the injured claimant and awarded a compensation of Rs.32,47,000/- with interest at the rate of 7.5% per annum and to recover the same from the owner of the TVS Jupiter motorcycle.

8. Learned counsel appearing for the appellant/Insurance Company would state that the owner cum rider of TVS Jupiter motorcycle vehicle No.TN 86 D 9874 insured with the appellant did not possess a valid and effective driving license to drive the vehicle at the time of accident. Hence, the Tribunal erred in holding the appellant to pay the compensation and granting liberty to the Insurance company to recover the amount from the owner of the vehicle. He would further state that the accident was solely due to the rash and negligent riding of the claimant alone. The Tribunal has erred in fixing the income of Rs.15,000/- per



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month. Learned counsel would further state that though the doctor had assessed the disability of the claimant as 80%, the lower Court has erroneously taken the loss of earning as 100% and the Tribunal failed to differentiate between the physical disablement and loss of earning capacity. There is no evidence of earning capacity of the claimant and the Tribunal has erred in adopting multiplier method and granting a sum of Rs.21,60,000/- for permanent disability and loss of earning capacity. The award of Rs.7,42,000 towards medical expenses and Rs.1,50,000/- for extra nourishment are very excessive.

9. Heard the learned counsel appearing for the appellant/Insurance Company, the learned counsel appearing for the 1st respondent/injured claimant and perused the entire materials available on record.

10. Insofar as the negligence part is concerned, the Tribunal, after carefully considering the evidence of P.W.1 and Ex.P1-FIR had come to the conclusion that only due to the rash and negligent driving of the 1st respondent/2nd respondent herein who was riding the TVS Jupiter Motorcycle bearing Reg.No.TN 86 D 9874, was responsible for the



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accident. The appellant/Insurance Company did not examine the driver of the TVS Jupiter motorcycle before the Tribunal, to give rebuttal evidence regarding oral evidence of P.W1 and documentary evidence, Ex.P1. Hence, the Tribunal fixed the negligence on the part of the 1st respondent before the Tribunal/2nd respondent herein, rider of the TVS Jupiter motorcycle. Therefore, we are of the view that the Tribunal has rightly fixed the negligence on the part of the driver of the TVS Jupiter motorcycle.

11. Insofar as the assessment of disability is concerned, the contention of the appellant is that though the doctor had assessed the disability as 80%, the lower Court has taken the loss of earning as 100% and the Tribunal failed to differentiate between the physical disablement and loss of earning capacity. The said contention cannot be countenanced. It is pertinent to point out that as per the decision of the Hon'ble Supreme Court reported in AIR 1970 SC 376 (C.K.Subramonia Iyer v. Kunhikuttan Nair), it has been held that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. The injured is to be compensated for



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his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned. The claimant had sustained grievous injuries and was admitted in Sudha Hospital, Erode from 23.09.2019 to 23.10.2019 which is corroborated through Ex.P5 Discharge summary. As per the evidence of P.W.3/ employer, the injured is a Marketing Manager at Brill Traders Dyes and Chemicals Sathi Road, Erode and was earning a sum of Rs.48,000/- per month till the date of accident. Ex.P20, salary certificate from 01.04.2019 to 10.07.2019 shows that the claimant was paid Rs.40,000/- to Rs.48,000/- per month. Moreover, in Ex.P10, the doctor of Sudha Hospital has given a letter stating that the claimant is taking treatment in their hospital for the past 3 years and the patient is bedridden and cannot ambulate and he is not conscious and cannot attend court proceedings. It is also brought to the notice of this Court that the claimant is still unconscious. Therefore, we are of opinion that the Tribunal has rightly determined the loss of earning capacity as 100% and we find that it is just and proper and no interference is called for.



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12. Further, the injured is 40 years at the time of accident. The injured was working as a Marketing Manager at Brill Traders Dyes and Chemicals Sathi Road, Erode and was earning a sum of Rs.48,000/- per month at the time of accident. To prove the same, the employer P.W.3 was examined. The Tribunal, considering the evidence of P.W.3 and the salary slips Exs.P20 & 21, fixed the permanent disability and loss of earning power as Rs.21,60,000/- which in the opinion of this Court is just and proper and therefore, the same need not be interfered with.

13. 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 Tribunal.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal 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



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weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same. No costs.

Consequently, connected Miscellaneous Petition is closed.

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

17.10.2024

Index : Yes / No

Internet : Yes

vsi

To

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

J. NISHA BANU, J.
and
R.KALAIMATHI,J.



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