IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2443 of 2024
and
C.M.P.No.19427 of 2024

The Branch Manager,
Reliance General Insurance Company Ltd.,
Old No.15, New No.29, North Usman Road,
T.Nagar, Chennai. ... Appellant

Vs.

1. Karnagi @ Kannagi

2. Senthil Kumar

3. Veeramani

4. The Branch Manager,
United India Assurance Company Ltd.,
No.171E, Nehruji Road,
Villupuram. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated

19.02.2024 made in M.C.O.P.No.822 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II (FAC), Villupuram.

For Appellant : Ms.R.Sreevidhya

For Respondent : Mr.P.Murali for R1
No appearance for R2
Mr.J.Muthukumar for R3
Mr.J.Chandran for R4

JUDGMENT

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

This Appeal has been filed by the Insurance Company against the judgment and decree dated 19.02.2024 passed in M.C.O.P.No.822 of 2019 by the Motor Accident Claims Tribunal, Special Sub Court No.II (FAC), Villupuram, by which, a sum of Rs.23,51,420/- was awarded as compensation to the respondent/claimant.

2. The case in brief of the injured claimant is that on 05.06.2019 at about 02.00 p.m. while Karnagi @ Kannagi/ injured claimant was travelling as a passenger in the 3rd respondent auto bearing Reg.No.TN-32-Q-2056, a Lorry bearing Reg.No.PY 01 AD 4199 driven in a rash and negligent manner hit against the auto. Due to the impact, Karnagi @ Kannagi sustained multiple grievous injuries all over the body. She was

admitted in JIPMER Hospital, Pondicherry, for treatment. According to the claimant, the accident occurred due to rash and negligent driving of the drivers of both the vehicles and the 1st respondent and 2nd respondent, the owner and insurer of the Lorry, the 3rd respondent and 4th respondent, the owner and insurer of the auto, are jointly and severally liable to pay compensation to the injured. The claimant claimed a sum of Rs.35,00,000/- as compensation.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Lorry and awarded a sum of Rs.23,51,420 /- as compensation to the claimant and the 1st and 2nd respondents, being being the owner and the insurer of the said lorry respectively are jointly and severally liable to pay the compensation to the injured claimant.

4. Challenging the said award dated 19.02.2024 made in M.C.O.P.No.822 of 2019, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel for the appellant submitted that the Tribunal erred in holding that the appellant is liable to pay the compensation. The Tribunal failed to appreciate that the accident was solely due to the rash and negligent of the passenger auto bearing Reg.No.TN-32-Q-2056. The passenger auto stopped the auto in the middle of the road and the claimant and four others were loading the baskets in the passenger auto and hence, the accident had occurred. Therefore, the total negligence is on the part of the passenger auto.

6. Learned counsel for the appellant would further state that there no evidence was produce to substantiate income of the claimant, however, the Tribunal adopted the multiplier method and granting Rs.16,06,500/- for loss of earning capacity. He would further state that the amount awarded for pain and suffering and loss of amenities are without any basis and excessive. Therefore, he would pray to set aside the award passed by the Tribunal.

7. Learned counsel for the claimant would state that the claimant is a fish seller and was earning Rs.25,000/- per month. At the time of

accident, the claimant was 42 years old. She sustained crush injury in left leg. She had undergone several surgical treatments from 05.06.2019 to 01.02.2020 in JIPMER Hospital, Pondicherry. Thereafter, she was admitted in PIMS Hospital, Pondicherry from 24.07.2020 to 04.08.2020 and in the said PIMS hospital also she had undergone surgical treatment. The permanent disability of the claimant was assessed as 85%. The injured claimant is not able to do any work and lost her earning capacity. Therefore, the learned counsel would state that the award passed by the Tribunal need not be interfered with and prayed to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the learned counsel for the 1st, 3rd and 4th respondents and perused the materials available on record. There is no representation for the 2nd respondent. The 2nd respondent/Senthilkumar, the owner of the vehicle was set exparte before the Tribunal.

9. The appellant Insurance Company has filed this appeal questioning the negligence and quantum. The Tribunal has awarded a sum of Rs.23,51,420/- as compensation to the injured claimant.

10. It is seen from Ex.P15, Motor Vehicle Inspector report that rear side body of the auto was fully damaged and such damages would be caused due to hit from behind. As per the Motor Vehicle Report, the accident was not caused due to any mechanical defect in the Lorry. As per the FIR, the lorry hit behind the auto. Therefore, we are of the opinion that the Tribunal has rightly considered the evidence on record and held that the accident was caused due to rash and negligent driving of the driver of the lorry and we find no infirmity in the said findings of the Tribunal.

11. According to the claimant, she is a fish seller, earning a sum of Rs.25,000/- per month. However, considering the avocation of the claimant and the year of the accident, the Tribunal fixed the notional income of Rs.9,000/- per month. The claimant sustained crush injury in left leg. The Medical Board has assessed the disability at 85% permanent disability. Therefore, the Tribunal, considered the permanent disability for loss of earning considered as 85%. Further, considering the age of the injured and the nature of injuries and the permanent disablement, the

Tribunal fixed a sum of Rs.16,06,500 towards disability and future loss of income i.e., 11,250 x 12 x 85/100 = 1,14,750 x 14 = Rs.16,06,500/-, which in our opinion, the said finding need not be interfered with.

12. Insofar as future prospects is concerned, as the age of the injured is 42 years, as per the decision in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***(2018) 1 LW 331,*** the Tribunal has taken 25% towards future prospects and applying multiplier 14, had awarded a sum of Rs.16,06,600/- (i.e., 11,250 x 12 x 85/100= 1,14,750 x 14) towards Disability and Future Loss of Income, with which, we find no error in the said findings of the Tribunal.

13. Further, insofar as the contention of the learned counsel for the appellant that the amount awarded for pain and suffering and loss of amenities are without any basis and excessive is concerned, it is seen from the records that the claimant had undergone surgical treatment on 05.06.2019, 08.06.2019, 25.06.2019 and debridement and external fixation of pelvic fracture and left AK gullotine amputation done, loop transverse colostomy done, bladder repair and suprabic cystotomy done,

debridement of amputation stump and external fixation of pelvic done and wound debridement and revision amputation were done. She had undergone further surgical treatment on 30.07.2020 and colostomy closure under general anaesthesia done. As per Ex.P4- out patient record, she had been under treatment till the year 2021. Considering the nature of injuries and the treatment undergone by her, the Tribunal awarded Rs.3,00,000/- towards pain and sufferings. Further, the claimant was admitted in JIPMER Hospital, Pondicherry from 05.06.2019 to 01.02.2020 and subsequently, she was admitted in PIMS Hospital, Pondicherry for the period from 24.07.2020 to 04.08.2020. The Tribunal, considering the disability assessment and the nature of injuries, awarded Rs.2,00,000/- towards loss of amenities. We are of the opinion the said amount awarded by the Tribunal is fair and reasonable and does not warrant interference by this Court. The amount awarded under the other heads, viz., Extra Nourishment, Rs.50,000/-, Damage to clothes Rs.1,000/-, Transportation charges Rs.50,000/- Attendant charges Rs.50,000/- and Medical expenses Rs.93,922/- is not excessive as the injured had underwent number of surgeries and was taking treatment till the year 2021. Therefore, the said award granted under the aforesaid heads, is fair 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 and the sum of Rs.23,51,420/- awarded by the Tribunal as compensation to the claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The other directions issued by the Tribunal and the mode of payment of compensation remain unaltered. No costs. The connected miscellaneous petition is closed.

(J.N.B, J.)   (R.S.V., J.)
12.12.2024

vsi

To

The Motor Accident Claims Tribunal,
Special Sub Court No.II (FAC),
Villupuram.

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

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