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C.M.A.No.3338 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU

and

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3338 of 2024
and C.M.P.No.28160 of 2024

Reliance General Insurance Company Limited,
Balmar Lawrie House, No.268, Anna Salai,
Thenampet, Chennai - 28.

... Appellant

Vs.

1. K. Saravanan

2. S. Arasu

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2023 passed in M.C.O.P.No.30 of 2011 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Madurantakam.

For Appellant : Mr.P.Suresh Srinivasan

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JUDGMENT

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

The appellant/Insurance Company, has filed this appeal against the award dated 28.08.2023 passed in M.C.O.P.No.30 of 2011 on the file of the the Motor Accident Claims Tribunal (Subordinate Judge), Madurantakam.

2. According to the claimant, on 05.09.2010 at about 12.00 hours, one Balaji was riding motor cycle bearing Registration No.TN-21-T-8521 from Timmavaram to Elapakkam. In the said vehicle, the first respondent/claimant was travelling as a pillion rider. When they were proceeding near Kayapakkam Junction Road, Mahindra Van bearing Registration No.TN-07-H-9637, which came from opposite direction driven by its driver in the course of employment under the second respondent, hit against the motor cycle. In this accident, the first respondent sustained grievous injuries. Therefore, the first respondent/claimant filed the claim petition in M.C.O.P.No.30 of 2011



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on the file of the Motor Accident Claims Tribunal, Madurantakam, claiming a compensation of Rs.15,00,000/- and the Tribunal has also awarded the said sum as compensation. Aggrieved over the same, the Insurance Company has filed the present Appeal.

3. The learned counsel for the appellant/Insurance Company submits that the Tribunal erred in holding that the alleged accident was caused due to the rash and negligent driving of the driver of the Mahindra Van bearing Registration No.TN-07-H-9637, insured with the appellant and erred in holding that the appellant is liable to pay huge compensation. He further submits that the Tribunal erred in fixing the income of the deceased as Rs.6,000/- per month without any basis which is on the higher side. He further submits that the Tribunal has erroneously granted a sum of Rs.1,50,000/- towards pain and sufferings and a sum of Rs.1,50,000/- towards loss of amenities, which are on the higher side. Therefore, he submits that the total compensation of Rs.15,00,000/- under various heads is unsustainable and the same is liable to be interfered with.



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4. The appeal is taken up for final disposal at the admission stage itself, since the disposal of this case will not affect the respondents in any manner.

5. Before the Tribunal, the claimant/injured has examined himself as P.W.1 and Ex.P1 to Ex.P13 were marked. On the side of the second respondent, one Shanmugam, who is working in the Regional Transport Office has been examined as R.W.1 and one Sangeetha, who is working as a Manager (Legal), has been examined as R.W.2 and Ex.R1 to Ex.R6 were marked and the Disability Certificate received from the Medical Board was marked as Ex.C1. The victim deposed that the accident had taken place only due to the rash and negligent driving and over speed of the second respondent's vehicle, which came from opposite direction. Ex.P1/F.I.R also supports the case of the victim. From the evidence, it is clear that a Mahindra Van bearing Registration No.TN-07-H-9637, which was driven by its driver in a rash and negligent manner with high speed came from opposite side hit against the motor cycle. As a result,



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the first respondent sustained multiple fatal injuries. Thus, the Tribunal fixed the negligence on the part of the driver of the Mahindra Van bearing Registration No.TN-07-H-9637, insured with the appellant, which in our opinion is proper.

6. Insofar as the contention of the learned counsel for the appellant that the Tribunal ought not to have fixed the monthly income of the first respondent as Rs.6,000/- is concerned, since the victim is an agriculturalist, the Tribunal, relying upon the judgment of the Hon'ble Supreme Court in *Syed' Saddiq and Others Vs. Divisional Manager United India Insurance Company Limited* reported in 2014 (1) *TNMAC 459*, fixed a sum of Rs.6,000/- as notional monthly income. As per the decision rendered in *National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601*, 40% was added towards future prospects, since the age of the victim was below 40 years at the time of accident. Thus, by awarding 40% of his income towards future prospects, a sum of Rs.2,400/- ($\text{Rs.6,000} \times 40/100 = \text{Rs.2,400/-}$) was added to his monthly contribution and his monthly contribution comes to Rs.8,400/- ($\text{Rs.6,000/-} + \text{Rs.2,400/-}$). The Tribunal has correctly taken



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the income of the victim since he is an agriculturalist and hence, this Court is not inclined to interfere with the same.

7. Insofar as the contention of the learned counsel for the appellant that the Tribunal has erroneously awarded a sum of Rs.1,50,000/- towards pain and sufferings and a sum of Rs.1,50,000/- towards loss of amenities are concerned, as per Ex.P3, the first respondent sustained severe head injury, facial bone fracture, chest injury with lung contusion, acute respiratory distress syndrome (recovered), abdominal injury - splenic laceration with moderate hemoperitoneum, segmental fracture of shaft of femur on right side, fracture of both bone of right leg, hence, he undergone open intra medullary nailing tibia on right side with an aesthetist condition. It is also noted in the discharge summary that when the petitioner was admitted in the hospital, he was unstable with hypoxia and given the ventilator support and resuscitated with blood transfusion and it is also noted that he will require open reduction and internal fraction of facial bones once his general condition improves. Hence, considering the nature of injuries, the Tribunal has awarded a sum of



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Rs.1,50,000/- towards pain and sufferings and a sum of Rs.1,50,000/- towards loss of amenities as the victim lost his entire activities for more than 5 years and despite treatment he has not recovered. Hence, the same does not require interference by this Court.

8. Further, the amount awarded under other heads viz., a sum of Rs.35,000/- towards Transportation, a sum of Rs.25,500/- towards Extra Nourishment, a sum of Rs.4,57,000/- towards Medical Bills, a sum of Rs.25,000/- towards Attendant Charges and a sum of Rs.20,000/- towards Future Medical Expenses are just and reasonable.

9. In view of the above, we do not find any infirmity or illegality in the said findings of the Tribunal, warranting interference by this Court and the award passed by the Tribunal is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. The Appellant/ Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims



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Tribunal, less the amount already deposited, if any, within a period of four (4) weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/first respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.S.V., J.)
09.12.2024

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To

The Motor Accident Claims Tribunal (Subordinate Judge),
Madurantakam.



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R. SAKTHIVEL, J.

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